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No 2758

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**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

H. E. ELLIS,

Appellant,

vs.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Appellees.

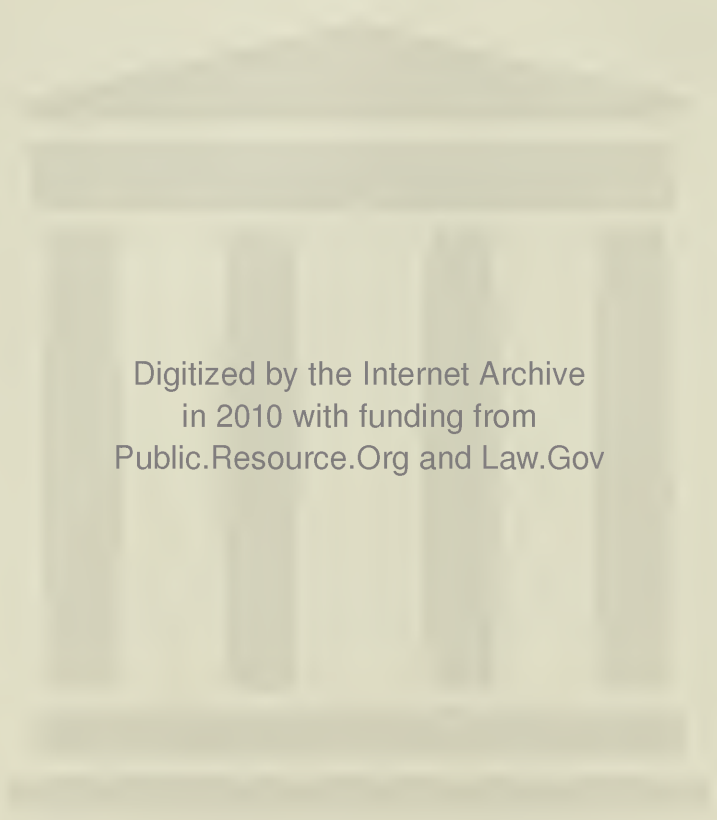
**Transcript of Record.**

Upon Appeal from the United States District Court for  
the Territory of Alaska, Third Division.

**Filed**

APR 22 1916

**F. D. Monckton,**  
Clerk.



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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the Territory of Alaska,  
Third Division.*

**Names and Addresses of Attorneys of Record.**

CHAS. G. GANTY, Valdez, Alaska,  
Defendant and Plaintiff in Error.

DONOHUE & DIMOND, Valdez, Alaska,

LYONS & RITCHIE, Valdez, Alaska,  
Plaintiffs and Defendants in Error. [1\*]

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 4, 1915.  
Arthur Lang, Clerk. By Chas. A. Hand, Deputy.

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Complaint.**

Come now the above-named plaintiffs, and for cause of suit against the above-named defendant, allege as follows, to wit:

I.

That on the 15th day of May, 1907, the defendant was the sole and legal owner of those certain eight (8) lode mining claims, situate on the northerly

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\*Page-number appearing at foot of page of original certified Record.



side of Valdez Bay, between Gold Creek and Shoups Bay, in the Valdez recording precinct, Territory of Alaska, named and described as follows:

The Mystic No. 1 lode claim, notice of location of which is of record in Book K of Mining Locations, at page 506, of the records of said Valdez recording precinct, at Valdez, Alaska.

The Mystic No. 2 lode claim, notice of location thereof being of record in said Book K, at page 505, of said records.

The Mystery No. 1 lode claim, notice of location thereof being of record in Book O of Mining Locations, at page 452, of said records.

The Mystery No. 2 lode claim, notice of location thereof being recorded in said Book O, at page 453, of said records.

The Mystery No. 3 lode claim, notice of location thereof being recorded in said Book O, at page 605, of said records.

The Parallel No. 1 lode claim, notice of location thereof being of record in said Book O, at page 607, of said records.

The Parallel No. 2 lode claim, notice of location thereof being of record in said Book O, at page 606, of said records. [4]

The High Bar lode claim, notice of location of which is of record in said Book O, at page 451, of said records.

That the legal title to each and all of said mining claims ever since the said 15th day of May, 1907, has been and now is in the name of said defendant.



## II.

That on the said 15th day of May, 1907, said defendant and plaintiffs Treat and Smith entered into a contract in writing concerning "Mystic No. 1" lode claim above described, this being the most valuable of said mining claims; said "Mystic No. 1" lode claim is described in said contract as "Mystic Lode Mining Claim." That under the terms of said written contract plaintiffs Treat and Smith advanced to defendant the sum of Five Hundred Dollars (\$500) for the purpose of enabling defendant to mine and ship to the Tacoma smelter, at Tacoma, Washington, five tons of ore from said mining claim, for the purpose of a test of said ore, and said plaintiffs were to receive twenty-five per cent of the net returns of said shipment, together with repayment to them of the said sum of Five Hundred Dollars so advanced, and, in case seventy-five per cent of the net returns of said shipment was not sufficient to repay said sum of Five Hundred Dollars to plaintiffs, then plaintiffs, under the terms of said contract, were to have, and said contract was to be construed as, a mortgage on said mining claim until they were fully repaid the said sum of Five Hundred Dollars.

A copy of said contract is hereto attached, marked Plaintiff's Exhibit "A," and made a part of this complaint.

## III.

That, pursuant to the terms of said contract, plaintiffs Treat and Smith, on or about the 15th day

of May, 1907, did advance to defendant the sum of Five Hundred Dollars, and thereafter [5] and during the year 1907, defendant did mine from said mining claim five tons or ore, more or less, and ship the same to the Tacoma smelter. That the returns from said shipment of ore did not pay transportation and smelter charges, and plaintiffs Treat and Smith did not receive any profit from said shipment, nor did they receive any part of the said sum of Five Hundred Dollars advanced to defendant as aforesaid. That defendant was without money or means to continue mining and shipping ore from said claim, and the full sum of Five Hundred Dollars remained due and owing from defendant to plaintiffs Treat and Smith at the date of the next contract between defendant and plaintiffs Treat and Smith, which contract is hereinafter set out.

#### IV.

That at the date of the next contract between defendant and plaintiffs Treat and Smith and which is hereinafter set out, the defendant was indebted to plaintiff Treat on a certain promissory note, dated December 15, 1905, for the sum of Two Hundred Dollars, bearing interest from date at the rate of twelve per cent per annum, which said note was secured by a mortgage, executed by defendant to said Treat, on certain real property in the Town of Valdez, Alaska, which said note was long past due and the amount of said note and interest thereon on the 9th day of July, 1908, the date of the next contract hereinafter set out, was Two Hundred Sixty-one

Dollars, which said sum was then due and owing from defendant to plaintiff Treat.

V.

That on the 9th day of July, 1908, defendant entered into a contract in writing with plaintiffs Treat and Smith in words and figures as follows, to wit:

“CONTRACT.

THIS CONTRACT AND AGREEMENT, made and entered into this 9th day of July, 1908, by and between H. E. Ellis, party of the first part, and George C. Treat and Edmund Smith, parties [6] of the second part, all of Valdez, Alaska, WITNESSETH:

That the said party of the first part is the owner of eight (8) gold mining claims, situated on the North side of Valdez Bay and about ten (10) miles from Valdez, Alaska, the location certificates of which are of record in the office of the United States Commissioner at said Valdez, Alaska.

In consideration of the covenants hereinafter mentioned, and to be fully kept and performed by the parties of the second part, the said party of the first part agrees to deed to the Mystic Gold Mining Company, a corporation hereinafter to be formed, the said eight gold mining claims, in consideration of the issuance to him of all of the capital stock of said corporation.

That said first party will then transfer to the parties of the second part twenty (20) per cent of said capital stock, and will turn over to the treasury of the said corporation twenty (20) per cent of said stock

to be sold by said treasury as may be directed by the board of directors of said corporation, the money received from the sale of said twenty (20) per cent of said stock being the treasury stock as aforesaid or so much thereof as may be sold to be used in establishing a reduction plant upon said mining claims and the development of said claims.

That in consideration of the twenty (20) per cent issued to the parties of the second part, the said parties of the second part are to pay all expenses of incorporating said company, recording and filing all necessary papers thereon, and receipt in full all claims that said parties of the second part, or either of them, have against the said party of the first part; also to give their time and attention in selling the amount of treasury stock necessary to be sold, and give whatever time and attention that may be necessary to the proper organization of said corporation and the sale of said stock.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 9th day of July, 1908.

H. E. ELLIS.

GEO. C. TREAT.

EDMUND SMITH.

In presence of:

B. B. LOCKHART.

United States of America,  
Territory of Alaska,—ss.

BE IT REMEMBERED, that on this 9th day of July, 1908, before me, a notary public in and for the Territory of Alaska, personally appeared H. E. Ellis,

George C. Treat and Edmund Smith, known to me to be the persons described in and who executed the foregoing Contract, and each duly acknowledged to me that he signed the same for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal]

B. B. LOCKHART,  
Notary Public." [7]

That the mining claims referred to in the foregoing contract as "(8) gold mining claims, situate on the North side of Valdez Bay and about ten (10) miles from Valdez, Alaska, the location certificates of which are recorded in the office of the United States Commissioner at Valdez, Alaska," are the eight mining claims described in the first paragraph of this complaint, that the consideration of said contract heretofore in this paragraph set out, and described therein as "claims that said parties of the second part, or either of them, have against the said party of the first part," to said contract, were the sums of Five Hundred Dollars theretofore advanced by plaintiffs Treat and Smith to defendant, as aforesaid, and the promissory note heretofore described held by plaintiff Treat against defendant, the total amount of said claims being Seven Hundred Sixty-one Dollars (\$761).

## VI.

That on the execution of the contract last set out, plaintiffs Treat and Smith did release defendant from and receipt to him in full for said sum of Five



Hundred Dollars, and plaintiff Treat surrendered and delivered said promissory note to defendant and released him from all obligation thereon. That shortly thereafter plaintiffs Treat and Smith caused to be prepared the necessary papers for the formation of the corporation provided for in said contract, and were ready, able and willing at all times to proceed to the complete formation of said corporation, and to pay all expenses of incorporating said company and recording and filing of all necessary papers in any manner connected therewith, and to perform each and all of the other things to be done and performed by them under the terms of said contract. That it was understood and agreed at the time of the execution of said contract that each of the parties thereto [8] was to be one of the incorporators and would sign and execute the articles of incorporation when it was decided to form said corporation.

That after the execution of the contract of July 9, 1908, set out in the fifth paragraph of this complaint, owing to the stringency of the money market and the probable difficulty that would be experienced in selling the treasury stock of said corporation to an advantage, it was decided by all of the parties to said contract to await a more opportune time to form said corporation, and while so waiting, during which time plaintiffs Treat and Smith were endeavoring to procure a purchaser for the treasury stock of said corporation when the same should be organized, said Treat and Smith procured from one A. J. Crane an offer to lease said mining claims.

That thereupon defendant Ellis and plaintiffs Treat and Smith agreed mutually to hold said contract of July 9, 1908, in abeyance and enter into a contract with the said A. J. Crane to lease all of said mining claims to said Crane, at which time defendant specifically agreed verbally to and with plaintiffs Treat and Smith that at the termination of said lease he would join Treat and Smith in forming the corporation as provided in said contract of July 9, 1908, and would carry out all of the terms of said contract to be performed by him thereunder, or, that he, defendant, would deed to each of plaintiffs Treat and Smith an undivided one-tenth interest in and to each and all of said mining claims.

## VII.

That, pursuant to said agreement, on the 5th day of June, 1909, defendant and plaintiffs Treat and Smith, as parties of the first part, entered into a contract with said Crane, as party of the second part, giving and granting to the said Crane an option to lease each and all of said mining claims for a period of six [9] years, at a rent or royalty of twenty per cent of the net product or proceeds for the first year and twenty-five per cent of said net proceeds for the remaining term of said lease, and providing that eighty-five per cent of said rent or royalty should be paid to defendant Ellis, and the remaining fifteen per cent of said royalty should be paid to plaintiffs Treat and Smith. That a copy of said contract with Crane is hereto attached, marked Plaintiff's Exhibit "B," and made a part of this complaint.

That at the time of the negotiations which resulted in the contract described as Plaintiff's Exhibit "B," the said defendant Ellis insisted on a higher rent or royalty than that named in the contract, and the said Crane refused to agree on a higher royalty, and thereupon plaintiffs Treat and Smith, believing the lease to be advantageous, agreed that defendant should have eighty-five per cent of said royalty instead of eighty per cent thereof to which percentage he was entitled at that time as the owner of eighty per cent of said mining claims, in order to induce defendant to enter into said lease.

#### VIII.

That thereafter by mesne conveyances B. F. Millard became assignee of the contract between plaintiffs Treat and Smith and defendant Ellis with said Crane, a copy of which contract is attached hereto and marked Plaintiff's Exhibit "B," and thereafter on the 23d day of July, 1909, defendant and plaintiffs Treat and Smith, as owners of each and all of said mining claims, entered into a lease of each and all of said mining claims with B. F. Millard, pursuant to the terms of the contract marked Plaintiff's Exhibit "B," heretofore referred to. That said lease to said B. F. Millard provided, among other things, that at the termination of said lease all machinery, [10] tools, equipment and improvements placed upon said mining claims by said lessee, his successors or assigns, should, at the termination of said lease, be left upon the property and become the property of the lessors. That copy of said lease



with B. F. Millard is hereto attached, marked Plaintiff's Exhibit "C," and made a part of this complaint.

### IX.

That thereafter on the 4th day of August, 1909, the said B. F. Millard assigned and transferred said lease to the Cliff Mining Company, a corporation, and thereupon said Cliff Mining Company entered into the possession of said mining claims and operated them under said lease until on or about the 15th day of August, 1914, at which time the said Cliff Mining Company surrendered the possession of said claims and the machinery, tools, equipment and improvements placed thereon to the lessors in said lease, to wit, defendant Ellis and plaintiffs Treat and Smith.

### X.

That during the time the said Cliff Mining Company was operating said mining claims it placed thereon a large amount of valuable mining machinery, tools, buildings and equipment, of the value of more than Thirty Thousand Dollars, which said machinery, tools, buildings and equipment are now upon said mining claims. That the plaintiffs herein, as the owners of twenty per cent interest in said mining claims, and under the terms of said lease, are now the owners of twenty per cent interest in and to said tools, machinery, buildings and equipment.

### XI.

That on or about the 3d day of January, 1913, plaintiff Logan Archibald purchased from plaintiff Edmund Smith an undivided one-half of said

Smith's interest in and to each and [11] all of said mining claims, and in and to all of the rights and privileges accruing to the said Smith by reason of the contracts hereinbefore mentioned and set out, and said plaintiff Archibald is now and ever since on or about the said 3d day of January, 1913, has been the owner of one-half of the interest formerly belonging to said Plaintiff Smith.

## XII.

That plaintiff Treat is now the owner of an undivided one-tenth interest, plaintiff Smith is the owner of an undivided one-twentieth interest, and plaintiff Archibald is the owner of an undivided one-twentieth interest in and to each and all of said mining claims and in and to all of the machinery, tools, equipment and buildings and improvements thereon. That defendant Ellis, during all of the time hereinbefore mentioned since the execution of the contract of the 9th day of July, 1908, heretofore in the fifth paragraph of this complaint set out, until about the month of February, 1915, never questioned or disputed the right and title of plaintiff to said premises and property as herein stated, but during all of said time recognized and approved said claim of title by plaintiffs as herein stated.

## XIII.

That ever since the surrender of said property by said Cliff Mining Company to the lessors named in Plaintiffs' Exhibit "C," the plaintiffs herein have been ready, able and willing to perform all of the matters and things to be performed by them, pursuant to the contract of July 9, 1908, heretofore set

out, but defendant Ellis has remained without the Territory of Alaska, residing in the States of Colorado and Montana, and has refused to join plaintiffs in the organization of said corporation, or to deed to plaintiffs an undivided twenty per cent interest in and to each and all of said mining claims, and during or about the month of February, 1915, said defendant Ellis disputed the claim of title of plaintiffs and denied that [12] plaintiffs herein have any right, title or interest whatever in or to said mining claims, or in or to said machinery, tools, equipment, buildings and improvements. And said defendant is now threatening and attempting to transfer the title to each and all of said mining claims to parties other than the plaintiffs herein in violation of the contracts and agreements aforesaid, and is threatening to sell and remove the machinery, tools, equipment and buildings now upon said property as aforesaid, without recognizing plaintiffs' right, title or interest in and to said property, or any part thereof, and unless enjoined by order of this Court defendant will make said transfer.

WHEREFORE, plaintiffs pray a decree of this court as follows:

First. That defendant specifically perform the contract of July 9, 1908, set out in the fifth paragraph of this complainant, or that he deed to plaintiffs Treat and Smith each an undivided one-tenth interest in and to each and all of said eight mining claims.

Second. That plaintiffs herein be adjudged and decreed to be the owners of an undivided one-fifth interest in and to all machinery, tools, equipment,

buildings and improvements placed upon said mining claims by the Cliff Mining Company, in the following proportions: Geo. C. Treat, an undivided one-tenth interest; Edmund Smith, an undivided one-twentieth interest; Logan Archibald, an undivided one-twentieth interest.

Third. That defendant, his agents, attorneys and employees, be enjoined and restrained from selling or removing any of said machinery, tools, equipment or buildings pending this suit. [13]

Fourth. That defendant be enjoined from transferring the title of each and all of said mining claims, and from leasing or encumbering said mining claims pending the final determination of this suit.

Fifth. For such other and further relief as to the court may seem just and equitable.

Sixth. That plaintiffs have judgment against the defendant for their costs and disbursements in this action.

DONOHUE & DIMOND and  
LYONS & RITCHIE,

Attorneys for Plaintiffs.

United States of America,  
Territory of Alaska,—ss.

Geo. C. Treat, being first duly sworn, deposes and says that he is one of the plaintiffs named in the foregoing complaint; that I have read said complaint, know the contents thereof and that the same is true I verily believe.

GEO. C. TREAT,

Subscribed and sworn to before me this 4th day of May, 1915.

[Official Seal]

ANTHONY J. DIMOND,

Notary Public for Alaska.

My commission expires Mar. 13, 1917. [14]

**Plaintiff's Exhibit "A" [to Complaint].**

This contract made this 15th day of May, 1907, by and between H. E. Ellis of Valdez, Alaska the party of the first part and Geo. C. Treat and Edmund Smith of the same place parties of the second part, witnesseth: That the said party of the first part is the owner of the "Mystic lode mining claim, situated on the north side of Valdez Bay, Territory of Alaska, the location certificate of which is recorded in the office of the United States Commissioner at Valdez, Alaska. That said party of the first part is desirous of getting out ore and shipping about five tons to the smelter for a test run and has not the money for said purpose. The parties of the second part agree to and hereby do put up the sum of \$500 for carrying out said joint venture. That out of the proceeds of said five tons more or less said parties of the second part are to receive ( $\frac{1}{4}$ ) one-fourth of net smelter returns, also the said sum of Five Hundred (\$500) Dollars. That if three-quarters ( $\frac{3}{4}$ ) of the returns of said five tons is insufficient to pay said sum of Five Hundred (\$500) Dollars, then in that case said parties of the second part are to have a lien on said mining claim and all ore therein contained to secure them to the said Five Hundred (\$500) Dollars or so much thereof as remains unpaid after said shipment and said party of the first



part is to continue the shipment of ore until said sum of Five Hundred (\$500) Dollars is fully paid and for the purpose of securing same this contract is deemed and considered by the parties hereto as a mortgage on said mining claim with full power of sale in the manner provided by law for the sale of real estate under real mortgage and for that purpose said party of the first part gives, grants, sells and assigns to the parties of the second part said mining claim, but as security only for said Five Hundred (\$500) Dollars and upon payment of said sum of Five Hundred (\$500) by the party of the first [15] part at any time within six (6) months from date hereof and the delivery to the parties of the second part of one-quarter ( $\frac{1}{4}$ ) of smelter returns from said shipment, less freight and smelter charges, this agreement to be null and void otherwise to remain in full force and effect.

In witness whereof we have hereunto set out hands and seals the day above written.

H. E. ELLIS,  
GEO. C. TREAT,  
EDMUND SMITH,

(In presence of)

B. B. LOCKHART.

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United States of America,  
Territory of Alaska.

Be it remembered that on this 15th day of May, 1907, before B. B. Lockhart, notary public for the Territory of Alaska, personally appeared H. E. Ellis, known to me to be the person described in and who

executed the foregoing instrument and acknowledged to me that he executed the same freely.

Witness my hand and seal the day and year above written.

[Seal]

B. B. LOCKHART,

Notary Public. [16]

**Plaintiff's Exhibit "B" [to Complaint].**

**MEMORANDUM OF OPTION AGREEMENT.**

This option agreement made and entered into this 5th day of June, 1909, by and between H. E. Ellis, Geo. C. Treat, and Edmund Smith, parties of the first part, all of Valdez, Alaska, and A. J. Crane of Seattle, Washington, party of the second part, WITNESSETH:

That for and in consideration of the sum of One Dollar in hand paid by the party of the second part to the parties of the first part and the carrying out of the further covenants herein mentioned the parties of the first part hereby give and grant unto the party of the second part the exclusive right, privilege, and option to lease, certain eight lode mining claims situated on the north side of Valdez Bay, known as the Mystic Group, Territory of Alaska, located by H. E. Ellis, one of the parties of the first part. That said lease to be upon the following terms and conditions, to wit:

For a period of six (6) years. For the first year, twenty per cent of the net product of proceeds of said claims and for the remaining five years, twenty-five per cent of said net proceeds from said mining claims; eighty-five per cent of said net proceeds to be paid to H. E. Ellis, one of the parties of the first part,

and fifteen per cent to be paid to Geo. C. Treat and Edmund Smith, settlement to be made each month. That in consideration of the acceptance of this option or entering into said lease the party of the second part is to, as soon as practicable, install reduction works suitable for reducing the ores from said mining claims in the most economical and practicable manner, said machinery or reduction plant to be of at least twenty ton daily capacity, and to employ a sufficient force only to work said *or* mining claims and operate said machinery in a practicable and economical manner. That the expense of operating said mines, mining claims, and reduction plant shall be [17] limited to the actual expense and cost to operate the same in an economical and practicable manner and shall not include salaries of officers of any corporation organized by the party of the second part or his assigns as such, but shall be limited to the actual expense of mining said ore and reducing the same including only the superintendent, miners, mill man, and other labors, explosives, repairs, but not to include the original cost of reduction plant. That in the operation of said mine the exploration and working the same shall be done in a good minerlike manner and with due degard for future working of the same and where necessary, properly timbered. It being the intention of the parties hereto that said party of the second part, his assigns or sucessors, shall not strip the said mine of its valuable ores except as the same are encountered in the natural mining and operation of the same with due regard to the permanency of the same and its future operation.



after the expiration of this lease. That the parties of the first part, their assigns or agent, shall at all times during business hours be permitted to examine the accounts of receipts and disbursements and examine the workings of the mine at any and all times during the continuance of this lease and in case of any dispute or disagreement should arise as to the proper working of the same or any of the matters herein set forth, the same shall be left to arbitration, either to one party mutually agreed upon by the parties hereto, but should they fail to agree upon one party then each party may select a representative or arbitrator and the two so selected in case they fail to agree may select a third and the decision of said sole arbitrator or the majority of the three as above provided shall be binding, final, and conclusive to the parties hereto. That a failure to work said [18] mine in an economical manner or the violation of any of the provisions, covenants, or agreements herein contained, by the party of the second part, his successors or assigns, shall at the option of the parties of the first part work a forfeiture of this lease. That at the expiration of the time herein set forth, to wit, six years, if the working and operation of said mine shall in the opinion of the parties of the first part have been economically and satisfactory, the party of the second part, his successors, heirs or assigns, shall have the right to an extension or renewal of this lease upon such terms and for such royalty or part of the proceeds as may be agreed to by the parties hereto depending upon the condition of the mine at said time. It is further understood

that all machinery, tools, equipment, and improvements placed upon said mining claims by the party of the second part, his successors, heirs or assigns, shall at the termination of this lease be left upon the property and become the property of the parties of the first part as a part of the consideration hereof and of said lease. That this contract, option, and agreement and the lease herein provided for shall descend to and be binding upon the heirs, executors, administrators, successors or assigns of the parties hereto.

IN WITNESS WHEREOF we have hereunto set our hands this 5th day of June, A. D. 1909.

H. E. ELLIS,  
GEO. C. TREAT,  
EDMUND SMITH,  
A. J. CRANE.

In the presence of:

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[19]

**Plaintiff's Exhibit "C" [to Complaint].**

**LEASE OF MINING GROUND.**

THIS INDENTURE, made this 23d day of July, A. D. 1909, between H. E. Ellis, four-fifths owner, George C. Treat and Edmund Smith, each owning ten (10) per cent, all of Valdez, Alaska, parties of the first part and lessors, and B. F. Millard, Trustee, of Valdez, Alaska, party of the second part and lessee, WITNESSETH:

That the said lessors, for and in consideration of the rents, royalties, covenants and agreements here-

inafter reserved, and by the said lessee, his successors and assigns to be paid, kept and performed, have let, and by these presents do let unto the said lessee, his successors or assigns, all the following described mines, mining claims and mining property situated on the northerly side of Valdez Bay between Gold Creek and Glacier Bay, to wit:

The Mystic No. 1 lode claim, recorded in Book K of Mining Locations, on page 506;

The Mystic No. 2 lode mining claim recorded in Book K of Mining Locations, page 505;

The Mystery No. 1 lode claim, recorded in Book O of Mining Locations, page 452;

The Mystery No. 2 lode claim, recorded in Book O of Mining Locations, page 453;

The Mystery No. 3 lode claim, recorded in Book O of Mining Locations, page 605;

The parallel No. 1 lode claim, recorded in Book O of Mining Locations, page 607;

The Parallel No. 2 lode claim, recorded in Book O of Mining Locations, page 606;

The High Bar lode claim recorded in Book O of Mining Locations, page 451, together with the appurtenances.

TO HAVE AND TO HOLD unto the said lessees, his successors or assigns, for the term of six (6) years from the date hereof, expiring on the 23d day of July, 1915, unless sooner forfeited as determined herein.  
[20]

In consideration of said lease, the said lessee, his successors or assigns, covenant and agree with the said lessors, as follows, to wit: To enter upon

said premises and mines and work the same in good minerlike manner, and in manner necessary to good and economical mining so as to take out the greatest amount of ore possible in due regard to the safety, development and preservation of the said premises as a workable mine; to work and mine said premises as aforesaid steadily and continuously from the date of this lease; to well and sufficiently timber said mine at all points and places where proper and necessary, and to repair all old timbering whenever necessary or whenever the same may become decayed and unsafe; to allow said lessors, their heirs or assigns, to enter upon and into all parts of said mine for the purpose of inspection; that during the life of this lease to perform the annual assessment work on said mining claims, and to annually furnish to the lessors affidavits and proofs of the performance of such assessment or representation work, and to hold and preserve the said possession to said premises during the life of this lease, and not allow any person under any pretense to gain or hold possession of the same or any part thereof adverse to the lessors; to occupy and hold all cross or parallel lodes, dips, spurs, feeders and crevices or the mineral deposits of any kind upon said premises which may be discovered under this lease, and which may be discovered by said lessee, his successors or assigns, or any person or persons under him or them, in any manner at any point within the boundary lines of said lode claims, the same to be the property of said lessors with privileges, however, that the said lessee, his

successors, or assigns, of working the same under this lease, and the said lessee, his successors or assigns, further agree not to locate or record any mining ground or claims that will conflict with any of the lode [21] claims described herein except in the name of said lessors.

Said lessee, his successors or assigns, as soon as practicable, are to install reduction works suitable for reducing said ores from said mining claims in an economical and practicable manner, said machinery or reduction plant to be at least of twenty (20) tons daily capacity.

That said lessee, his successors or assigns, shall not strip or gouge the said mine or mining claims of its valuable ores except as the same are encountered in working the same in a minerlike manner, and in the operation of the said mines and mining claims, and the same shall be worked and operated with due regard to the permanency of the same and its future operation after the expiration of this lease.

That as rents and royalties, the said lessee shall pay to the said lessors for the first year twenty (20) per cent of the net profit or proceeds of said mining claims, and of the remaining five (5) years twenty-five (25) per cent of said net proceeds from said mining claims. Eighty-five (85) per cent of said royalties shall be paid to H. E. Ellis, one of the lessors, and fifteen (15) per cent thereof to be paid to George C. Treat and Edmund Smith, share and share alike. Settlement shall be made on the 20th day of each and every month for the proceeds of the preceding month.



That the expense of operating said mines and mining claims and reduction plant or plants shall be limited to the actual expense and cost of operating the same in an economical and practicable manner, and shall not include salaries of any person except those actually employed in working the said mines and operating the said reduction plant, and limited to the actual expense for mining said ore and reducing the same and including only the actual expense of superintendent, miners, mill men and other labor necessarily and economically employed, explosives and repairing, but not to include the [22] cost of the reduction plant or plants or the installation of the same.

That the lessors, their assigns or agents, shall at all times during business hours, be permitted to examine the accounts, receipts and disbursements, and to examine the workings of the mines at any and all times during the continuance of this lease, and in case of any dispute or disagreement arising as to the proper working of the same, or any of the matters herein set forth, such difference shall be left to arbitration either to one party mutually agreed upon by the parties hereto, but should they fail to agree upon one party, then each party may select a representative or arbitrator, and the two so selected, in case they fail to agree, may select a third, and the decision of the said sole arbitration, or the majority of the three as above provided, shall be binding, final and conclusive upon the parties hereto, their heirs, successors or assigns.

That a failure to work said mines and mining

claims in an economical and practical manner, or the violation of any of the provisions, covenants or agreements herein contained by the lessee, his successors or assigns, shall, at the option of the parties of the first part, work a forfeiture of this lease.

That at the expiration of the time set forth herein, to wit, six (6) years, if the working and operation of said mines shall in the opinion of the parties of the first part, have been economically and satisfactorily performed, the lessee, his successors or assigns, shall have the right to an extension or renewal of this lease upon such terms and such royalty or a part of the proceeds as may be agreed upon by the parties hereto, their heirs, successors, or assigns, depending upon the condition of the said mines at said time.

It is further understood and agreed that all machinery, [23] tools, equipment and improvements placed upon said mining claims by the lessee, his successors or assigns, shall at the termination of this lease, be left upon the property and become the sole property of the lessors, as a part of the consideration hereof and of said lease; provided, however, that if the profits made by the lessee during the life of this lease shall not equal the cost of said reduction plant or plants and the installation thereof, the lessors, their heirs, successors or assigns, can elect to pay the difference to said lessee, his successors or assigns, less the natural depreciation of the use, wear and tear and retain the said machinery, or if said lessors their heirs, successors

or assigns, refuse to pay such difference, less the depreciation thereof, then and in that case the said lessee, his successors or assigns, shall have the right to remove the said reduction plant. That the amount to be allowed in said depreciation, wear and use, shall be ascertained by arbitration. If said parties fail to agree in considering such depreciation, the value of more modern machinery shall be taken *in the* consideration.

That said lessee, his successors or assigns, are to keep at all times the drifts, tunnels and other passages and workings of said demised premises thoroughly drained and cleared of loose rock and rubbish of all kinds.

That at the expiration of time mentioned herein as the termination of this lease, unless said lessors elect to renew the same, or of any termination thereof for any of the reasons herein set forth, said lessee, his successors or assigns, to deliver up the said premises with the appurtenances and all improvements subject to the foregoing provisions in good order and condition with all tunnels and other passages thoroughly clear of rubbish and drain, and the said mining property at all points ready for [24] immediate and continued workings of the same.

And finally upon the violation by the said lessee, his successors or assigns, or any persons under him or them of any covenants hereinbefore reserved, the term of this lease shall at the option of the said lessors, expire, and the same and other premises with the appurtenances shall become forfeited to



the said lessors, and the said lessors or their agent may thereupon, after demand of possession enter upon said premises and dispossess all persons occupying the same.

That each and every clause and covenant of this indenture shall extend to and bind the heirs, executors, administrators, successors or assigns of all the parties hereto.

WITNESS our hands and seals the day and year first above written.

H. E. ELLIS. (Seal)

GEO C. TREAT. (Seal)

EDMUND SMITH. (Seal)

B. F. MILLARD. (Seal)

In the presence of:

B. B. LOCKHART.

CHAS. E. BUNNELL.

United States of America,  
Territory of Alaska,—ss.

BE IT REMEMBERED that on this 23d day of July, A. D. 1909, before me, a notary public in and for the Territory of Alaska, personally appeared H. E. Ellis, George C. Treat, Edmund Smith and B. F. Millard, known to me to be the persons described in and who executed the foregoing lease and they each duly acknowledged to me that they signed and sealed the same as their free act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

[Seal] B. B. LOCKHART,  
Notary Public. [25]

**Motion to Strike [Portions of Complaint].**

*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721,

GEORGE C. TREAT, EDMUND SMITH and  
LOGAN ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

Comes now the defendant in the above-entitled action and moves the Court for an order striking from the complaint of the plaintiffs herein the following:

I.

All of paragraph II of said complaint, for the reason that the same is immaterial, irrelevant, redundant and surplusage.

II.

All of paragraph III of said complaint, for the reason that the same is immaterial, irrelevant, redundant and surplusage.

III.

All of paragraph IV of said complaint, for the reason that the same is immaterial, irrelevant, redundant and surplusage.

IV.

All of paragraph V of said complaint, from the beginning of the first line on page 5 to the end of said paragraph, for the reason that the same is imma-

terial, irrelevant and redundant.

V.

All of the first lines of paragraph VI of [26] said complaint, to the period in the fifth line of said paragraph; and all of said paragraph VI on page 6 from the beginning of the fourth line of said page 6 to the period on the fourteenth line thereof; for the reason that the same is immaterial, irrelevant, redundant and surplusage.

VI.

All of paragraph VII of said complaint, from the beginning of the ninth line on page 7 down to the close of said paragraph, for the reason that the same is immaterial, irrelevant, redundant and surplusage.

VII.

All of paragraph X of said complaint, from the period on the sixth line to the close of said paragraph, for the reason that the same is immaterial, redundant and surplusage.

VIII.

All of paragraph XII of said complaint, for the reason that the same is immaterial, irrelevant and redundant.

IX.

All of plaintiff's exhibit marked Exhibit "A" for the reason that the same is immaterial and irrelevant.

CHAS. G. GANTY,  
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Terri-

tory of Alaska, Third Division, June 2, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [27]

United States of America,  
Territory of Alaska,—ss.

DUE AND LEGAL SERVICE IS HEREBY ACCEPTED, this 8th day of June, A. D. 1915, by receiving a copy thereof, duly certified to by Chas. G. Ganty, one of the attorneys for the defendant.

ANTHONY J. DIMOND,  
One of *Attorney* for Plaintiffs. [28]

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**[Order Denying Motion to Strike Portions of  
Complaint.]**

*In the District Court for the Territory of Alaska,  
Third Division.*

Special February, 1915, Term—June 21—65th Court  
Day. Monday.

No. 721,

GEORGE C. TREAT, EDMUND SMITH and  
LOGAN ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**MINUTE ORDER ON MOTION TO STRIKE.**

Now, on this day, the motion of the defendant to strike came on for hearing, Donohoe & Dimond appearing as attorneys for the plaintiffs and C. G. Ganty representing the defendant, and after argu-

ments had on the same and the Court being fully advised in the premises,

IT IS ORDERED that said motion be and the same is hereby denied to which order and ruling of the Court defendant excepts and exception is duly allowed.

Entered Court Journal No. 9, page No. 166. [29]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721,

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Demurrer.**

Comes now the defendant, and by his attorney, Chas. G. Ganty, and demurs to the complaint of the plaintiffs on file in the above-entitled court and cause, for the following reasons, to wit:

I.

That several causes of action have been improperly united.

II.

That the complaint does not state facts sufficient to constitute a cause of action against defendant and in favor of plaintiffs.

CHAS. G. GANTY,  
Attorney for Defendant.

United States of America,  
Territory of Alaska,—ss.

Legal service is hereby admitted by receipt of a duly certified copy of the above demurrer.

Dated this 22d day of June, 1915.

ANTHONY J. DIMOND,  
One of the Attorneys for Plaintiffs.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, June 22, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.  
[30]

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*In the District Court for the Territory of Alaska,  
Third Division.*

Entered Court Journal No. 9, page No. 173.

February, 1915, Term—June 23d—Wednesday.

No. 721,

GEORGE C. TREAT, EDMUND SMITH and  
LOGAN ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Minute Order Overruling Demurrer.**

The demurrer in the above-entitled action coming on to be heard, Donohoe & Dimond and Lyons & Ritchie appearing as attorneys for the plaintiffs and C. G. Ganty appearing as attorney for the defendant,



and after arguments had and the demurrer being fully considered by the Court,

IT IS ORDERED that said demurrer be and the same is hereby overruled, and the defendant is given until Monday, June 28th, 1915, in which to further plead in this action, to which order and ruling of the Court defendant excepts and exception is allowed.  
[31]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Answer.**

Comes now this defendant, H. E. Ellis, and answering to the several paragraphs of plaintiffs' complaint, paragraph by paragraph, in the order of said complaint, alleges and denies as follows, to wit:

I.

This defendant admits that on the 15th day of May, 1907, defendant was the sole and legal owner of those certain eight lode mining claims described in paragraph I of said complaint; and that the legal title to each and all of said mining claims ever since the said 15th day of May, 1907, has been and now is in the name of said defendant.

## II.

This defendant denies that the "Mystic No. 1" lode claim named in paragraph II of said complaint is the most valuable of said mining claims; but admits the other allegations in said paragraph contained.

## III.

This defendant admits that pursuant to the terms of the contract described in paragraph II of said complaint, plaintiffs Treat and Smith did advance to defendant the sum of Five Hundred Dollars and that defendant did mine from said mining claims five tons of ore, more or less; but defendant specifically [32] denies each and every of the other allegations of said complaint in paragraph III contained.

## IV.

This defendant admits that at the date of the contract between defendant and plaintiffs Treat and Smith, in paragraph V of said complaint set out, defendant was indebted to said Treat in the sum of Two Hundred Dollars with interest thereon from December 15th, 1905, and that said sum and interest was due and owing to said Treat from defendant on the 9th day of July, 1908, but defendant denies that defendant was indebted to said Treat on a certain promissory note dated December 15th, 1905, or on any promissory note whatsoever. And defendant denies each and every allegation and averment in paragraph IV of said complaint except as hereinabove admitted; and further answering said paragraph IV defendant says that on December 15th,

1905, he executed a mortgage on certain real property of defendant, situated in the town of Valdez, in what was then known as the Reservation Addition to said town of Valdez with intent to secure said Treat in the payment of the aforesaid sum of Two Hundred Dollars and interest, which said mortgage defendant delivered to said Treat on or about the 15th day of December, 1905; but that defendant did not at any time execute or deliver to said Treat, or to any person on behalf of said Treat, any note or other acknowledgment of said debt, excepting only the said mortgage, which said mortgage is of record in Book A of Mortgages on page 475 of the records of the Valdez Recording Precinct, in the office of the Recorder for said Precinct, at Valdez, Alaska.

V.

This defendant admits that on the 9th day of July, 1908, he entered into a contract in writing with plaintiffs Treat and Smith, as set forth in Paragraph V of said complaint; and defendant admits that the mining claims referred to in said contract are the eight mining claims described in the first paragraph of said complaint. Defendant denies that the consideration [33] of said contract, set out and described in said contract as "claims that the said parties of the second part, or either of them, have against the said party of the first part," to said contract, were the sums of Five Hundred Dollars theretofore advanced by plaintiffs Treat and Smith to defendant, as aforesaid, and the promissory note described in said complaint as held by plaintiff Treat against defendant, and defendant denies that

said Treat held any promissory note against defendant on the 9th day of July, 1908, or at any other time; and defendant denies that the total amount of said claims on said date was Seven Hundred Sixty-one Dollars, but states the fact to be that the said consideration was the amount of Five Hundred Dollars less three quarters ( $\frac{3}{4}$ ) of the net returns of the ore mined by defendant from the said Mystic No. 1 lode claim, as set forth in paragraph III of this answer, and as more fully appears in the first paragraph of defendant's affirmative defense hereinafter set forth; and the sum of Two Hundred Dollars and interest owing by defendant to plaintiff Treat, as set forth in paragraph IV of this answer.

#### VI.

Defendant denies that on the execution of the aforesaid contract, set out in paragraph V of said complaint, plaintiffs Treat and Smith released defendant from and receipted to him in full for said sum of Five Hundred Dollars, or for any sum; and defendant denies that plaintiff Treat surrendered and delivered said promissory note to defendant and released him from all obligation thereon; and further answering this paragraph defendant says that at the time of the execution of the said contract the plaintiffs Treat and Smith did not release defendant from any sum whatsoever; and did not receipt to defendant for any sum whatsoever, nor did said Treat, at said time, or at any other time, surrender or deliver to defendant any promissory note, or execute any instrument purporting to release defendant from any obligation.

Further answering this paragraph, defendant admits that plaintiffs Treat and Smith, prepared or caused to be prepared [34] the necessary papers for the formation of the corporation provided for in said contract; but defendant denies that plaintiffs Treat and Smith were ready, able, and willing at all times to proceed to the complete formation of said corporation, and to pay all expenses of incorporating said corporation and recording and filing of all necessary papers in any manner connected therewith, and to perform each and all of the other things to be done and performed by them under the terms of said contract; and defendant denies that said Treat and Smith were at any time; after the preparation of the necessary papers for the formation of the said corporation either ready, able or willing to proceed to the complete formation of said corporation, or to pay all expenses of the incorporation of said company, and recording and filing of all necessary papers in any manner connected therewith, or to perform each and all of the other things to be done and performed by them under the terms of said contract, or to perform any of the said necessary things by said plaintiffs Treat and Smith to be done and performed under the terms of said contract.

And further answering said paragraph defendant denies that after the execution of said contract of July 9, 1908, or at any other time, or for any reason, it was ever decided by all of the parties to said contract to await a more opportune time to form said corporation, and defendant denies that whilst wait-



ing a more opportune time to form said corporation the plaintiffs Treat and Smith were endeavoring to procure a purchaser for the treasury stock of said corporation when the same should be organized; and defendant denies that said Treat and Smith procured from one A. J. Crane an offer to lease said mining claims of defendant. And further answering this paragraph, defendant denies that defendant and plaintiffs Treat and Smith agreed mutually to hold said contract of July 9, 1908, in abeyance, as stated therein, and defendant admits that on or about June 5th, 1909, he agreed to enter into a contract with one A. J. Crane to lease all of said mining claims to [35] said Crane, but defendant specifically denies that at that time, or at any other time, he ever specifically agreed, either verbally or in writing, or at all, to or with plaintiffs Treat and Smith, that at the termination of said lease he would join said Treat and Smith in forming the corporation as provided in said contract of July 9, 1908, and that he would carry out all the terms of said contract to be performed by him thereunder; and defendant denies that he at that time, or any other time, agreed with said Treat and Smith that he, the defendant, would deed to each of plaintiffs Treat and Smith an undivided one-tenth interest in and to each and all of said mining claims, or any interest in or to any of said mining claims.

## VII.

Defendant admits that on the 5th day of June, 1909, defendant and plaintiffs Treat and Smith, as



parties of the first part, entered into a contract with said Crane, as party of the second part, and that a copy of said contract is attached to plaintiffs' complaint, marked Plaintiffs' Exhibit "B," but defendant denies each and every allegation and averment in said paragraph contained, except as hereinabove specially admitted.

### VIII.

Defendant admits that B. F. Millard became assignee of the contract between plaintiffs Treat and Smith and defendant with said Crane, and that thereafter, on the 23d day of July, 1909, defendant and plaintiffs Treat and Smith, entered into a lease of each and all of said mining claims with B. F. Millard, pursuant to the terms of the contract marked Plaintiffs' Exhibit "B," heretofore referred to; but defendant denies that said Treat and Smith entered into said contract as owners or as part owners of each and all of said mining claims or of any of said claims.

### IX.

Defendant admits that on the 4th day of August, 1909, said B. F. Millard assigned and transferred said lease to the Cliff [36] Mining Company, a corporation, and thereupon said Cliff Mining Company entered into possession of said mining claims and operated them under said lease; but defendant denies that said Cliff Mining Company operated said mining claims until August 15th, 1914, or at any time after the — day of July, 1914; and further answering said complaint and paragraph, defendant denies that said Cliff Mining Company surrendered

the possession of said claims and of said machinery, tools, equipment and improvements placed thereon, to the lessors in said lease, defendant Ellis and plaintiffs Smith and Treat, but defendant states the fact to be that defendant Ellis, on or about the —— day of July, 1914, took sole possession of said mining claims, and ever since so taking possession thereof has held said possession adversely to all other persons whomsoever, and still continues to hold such possession of said claims and of said machinery, tools, equipment and improvements placed thereon.

#### X.

Defendant admits that said Cliff Mining Company placed upon said claims some valuable mining machinery, tools, equipments and improvements, but defendant denies that the value of said mining machinery, tools, equipment and improvements is of the sum of Thirty Thousand Dollars, or that said value is any sum over the sum of Five Thousand Dollars; and defendant denies that the plaintiffs herein, or any of them, are the owners of twenty per cent interest in and to said tools, machinery, buildings and equipment, or of any interest therein whatsoever.

#### XI.

Defendant says that he has not sufficient knowledge of the allegations set forth in paragraph XI of said complaint, whereon to form a belief and for lack of sufficient information and knowledge whereon to form a belief denies the same.

#### XII.

Defendant denies that plaintiff Treat is the owner

of an undivided one-tenth interest, and denies that plaintiff Smith [37] is the owner of an undivided one-twentieth interest, and denies that the plaintiff Archibald is the owner of an undivided one-twentieth interest in and to each and all of said mining claims and in and to all of the machinery, tools, equipment, and buildings and improvements thereon; and defendant denies that said plaintiffs, or any of them, are the owners of any interest whatsoever in and to said mining claims or in and to any of said mining claims, or in and to said machinery, tools, equipment, buildings and improvements thereon; further answering said paragraph, defendant denies that during all the time mentioned since the execution of the contract of the 9th day of July, 1908, in the fifth paragraph of plaintiffs' complaint set out, until about the month of February, 1915, or at any other time, defendant ever recognized or approved any claim of right and title of plaintiffs, or any of them, in and to said mining claims, or in and to said property as in paragraph XII of said complaint set forth; but defendant states the fact to be that until shortly prior to the commencement of this action, neither the plaintiffs herein nor any of them have ever claimed, or set up, any right or title in or to said mining claims, or in and to said machinery, tools, equipment, buildings and improvements thereon, to the knowledge of defendant, until about the month of August, 1914, at which time plaintiff Treat went to said mining property and mining claims and asserted a right to enter thereon, but that

one John Hughes, who was then and there in charge of said mining claims and property as agent for said defendant Ellis, at that time informed said Treat of his said agency, and refused to allow said Treat to enter upon said premises or to take possession thereof or of any of said property;

### XIII.

Defendant denies that ever since the surrender of said property by said Cliff Mining Company. or at any other time, the plaintiffs herein, or any of them, have been ready, able and willing to perform all the matters and things to be performed by them. [38] pursuant to said contract of July 9, 1908, in paragraph V of plaintiffs' complaint set out, and defendant denies that said Cliff Mining Company surrendered said property to any of the lessors named in the lease, a copy of which lease is attached to said complaint, marked Plaintiffs' Exhibit "C," but states the fact to be that defendant took possession of said property as in paragraph XII of this answer set forth, and that said Cliff Mining Company thereafter notified said lessors of its intention to abandon said lease and said property on or about August 15th, 1914; further answering said paragraph, defendant admits that he has been without the Territory of Alaska, and that he has resided in the State of Colorado, but defendant denies that he has refused to join plaintiffs in the organization of said corporation, or to deed to plaintiffs an undivided twenty per cent interest in and to each and all of said mining claims, and defendant further says that

plaintiffs have never, during all the time of his said residence out of the Territory of Alaska, or at any time since June 5, 1909, demanded of defendant to join them in the organization of said corporation, or to deed to plaintiffs an undivided twenty per cent interest in and to each and all of said mining claims, or any interest therein.

And further answering said paragraph, defendant denies that he is now threatening or attempting to transfer the title to each and all of said mining claims to any parties whatsoever, and denies that such transfer if attempted would be in violation of the agreements and contracts in plaintiff's complaint set forth, or of any agreement entered into or existing between plaintiffs and this defendant and defendant denies that he is threatening to remove and sell the machinery, tools, equipment and buildings now upon said mining claims, and denies that plaintiffs have any right, title or interest in and to said property, or in and to said mining claims or any part thereof.

This defendant, further answering plaintiffs' [39] complaint in this cause, and as matters of defense, alleges the following:

First. That this defendant and plaintiffs Treat and Smith, on or about the 15th day of May, 1907, entered into the contract set forth in plaintiffs' complaint herein, and marked Plaintiffs' Exhibit "A," and defendant, in accordance with the terms of said contract, thereafter brought to Valdez, and delivered to plaintiff Smith five tons of ore, more or less,



which said ore defendant mined from the Mystic No. 1 lode claim; that plaintiff Smith, on behalf of himself and plaintiff Treat, took charge of said ore and, as said Smith subsequently informed defendant, shipped the same to a smelter in California; that said Smith thereafter informed defendant that the net returns on said ore were about Thirty-five Dollars per ton, but defendant has never received any payment of money or other reimbursement from or by reason of said smelter returns and that said Smith has retained possession of the smelters' accounting for said ore, and, to the best information and belief of defendant, still has the same in his possession.

Second. That after entering into said contract of the 15th day of May, 1907, and between said date and the 9th day of July, 1908, this defendant continued to work in the development of said Mystic No. 1 lode mining claim, and other adjacent claims described in plaintiffs' complaint, in paragraph I of said complaint, and by said work greatly increased the showing of valuable ore thereon and the value of said mining claims; and plaintiffs Treat and Smith were by defendant informed of the increased value of said mining claims, during said period, and said Treat and Smith during said period, repeatedly urged this defendant to incorporate a company for the purpose of operating and developing said claims and placing reduction works thereon, at which times said plaintiffs stated that they could quickly and easily sell sufficient of the treasury stock of such a corporation to finance the accomplishment of all of said purposes,



and that they, said Treat and Smith, knew [40] persons in Valdez, Alaska, who would buy said stock, and at the time the contract described and set forth in paragraph V of plaintiffs' complaint was entered into, said Treat and Smith represented and promised to this defendant that they would and could, within a few days after the execution of said contract, secure subscriptions for the sale of sufficient of the treasury stock of the company to be formed under the terms of said contract, to finance the development and mining operations on said claims and to build a reduction works thereon, and said Treat and Smith at said time further promised and agreed that immediately after the execution of said contract they would proceed to secure such subscriptions to said stock and to comply with all the terms of said contract, and that defendant entered upon said contract relying upon and in consideration of said promises and representations of said plaintiffs Treat and Smith.

That said Treat and Smith failed utterly to secure the subscriptions to the treasury stock of said corporation by them agreed to be secured, and failed to carry out any of the terms of said contract, excepting only that said Treat and Smith, on or about the 21st day of July, 1908, drew up or caused to be drawn articles of incorporation of a company, designated in said articles as the Mystic Gold Mining Company, in accordance with the terms of said contract, which said articles of incorporation were, on or about said 21st day of July, 1908, executed by defendant and by said Treat and Smith; that at the time of executing the articles of incorporation aforesaid, this

defendant also signed an agreement to deed to the said Mystic Gold Mining Company the said mining claims, for and in consideration of the issuance to defendant of all the capital stock of said corporation, and to donate to said corporation twenty per cent of said stock, or forty thousand shares, said shares to be sold by said corporation, or so much thereof as might be necessary to raise sufficient money to develop said mining property and install a reduction plant thereon; which said articles of incorporation and said agreement to deed said mining claims were, after being signed as aforesaid, left by defendant in the hands of plaintiffs [41] Treat and Smith. That about two months after the execution of said contract of July 9, 1908, plaintiffs Treat and Smith informed this defendant that they could not carry out their part of said contract, and thereafter, in the fall of 1908, plaintiffs Treat and Smith asked this defendant to pay them the money he owed them, if possible, and urged defendant to sell his said mining claims in order that he might be enabled to repay them said money from the proceeds of such sale; that defendant refused to sacrifice his said property as requested by said plaintiff, but specifically agreed to and with said Treat and Smith that said contract of July 9, 1908, should be abandoned and that said Treat and Smith should hold the mining claims and said real property of defendant as security for the money formerly owing by defendant to said Treat and Smith from the payment of which said money defendant was to have been released under the terms of said contract of July 9, 1908, and it was thereupon

mutually understood and agreed, by and between this defendant and said plaintiffs Treat and Smith that in consideration of the mutual abandonment of said contract and all rights thereunder, the liens theretofore held by said Treat and Smith against the property of defendant were revived, and that all of said parties stood mutually as if said contract of July 9, 1908, had never been entered into, and that the same was void and of no further effect, and said plaintiffs Treat and Smith, to the best information, knowledge and belief of this defendant, asserted thereafter no right or claim to said mining property of this defendant, or to any interest therein other than the aforesaid lien, until about the month of June, 1909, at which said time one A. J. Crane and one B. F. Millard were negotiating with this defendant with a view to leasing or purchasing the said mining claims of defendant.

Third. That shortly prior to the 5th day of June, 1909, the plaintiffs Treat and Smith represented to this defendant that, in view of the length of time defendant had used the money by them advanced for the shipment of ore from said mining claims, and of the [42] many services rendered by them, and of the efforts made by them to finance the development and operation of the mining property of defendant. It was right and fair that said Treat and Smith should be given an interest in said mining claims, and said Treat and Smith at said time further represented to this defendant that their said services, and the lending by them to defendant of the money aforesaid amounted practically to a grubstake, all of

which said representations defendant then and there denied ; that in order to settle the demands of plaintifffs Treat and Smith to an interest in the mining claims of defendant, and in order that said demands might not delay or prevent this defendant from disposing of his said mining claims to said A. J. Crane or to said B. F. Millard, this defendant on or about the 5th day of June, 1909, asked of plaintifffs Treat and Smith what they would take in full satisfaction of all their claims and demands against this defendant and of their alleged rights or interest in and to the said mining claims of defendant, and at that time the plaintifffs Treat and Smith stated that they would accept in full satisfaction of all their claims and demands against this defendant and of all their alleged rights or interest in and to the mining claims of defendant, fifteen per cent of the royalties that might be paid to said defendant under the terms of a proposed option of lease to all of said mining claims, the negotiations for which said option of lease were at that time then pending between this defendant and said A. J. Crane ; and it was thereupon specifically understood and agreed by and between this defendant Ellis and said plaintifffs Treat and Smith, that in consideration of said defendant transferring to said plaintifffs Treat and Smith fifteen per cent of all royalties by said defendant to be received under the terms of the said proposed option to lease the said mining claims of defendant the said plaintifffs Treat and Smith would accept said fifteen per cent of said royalties in full satisfaction of all their alleged rights, title or interest in and to



said mining claims or any of them, and in full satisfaction of all claims that said Treat and Smith, or either of them, had against said defendant, and said [43] Smith further agreed, in consideration of his share of said fifteen per cent of said royalties, to act as the attorney and legal adviser of said defendant in all matters appertaining to said option of lease and to the royalties derived thereunder.

Fourth. That, pursuant to the agreement set forth in the third paragraph of defendant's affirmative defense hereinabove, on the 5th day of June, 1909, said plaintiff Smith drew or caused to be drawn the option to lease between defendant and plaintiffs Treat and Smith, as parties of the first part, and said A. J. Crane, as party of the second part, a copy of which said option to lease is attached to plaintiff's complaint herein and marked Plaintiff's Exhibit "B"; and that, pursuant to the said agreement, said plaintiff Smith thereafter, on or about the 23d day of July, 1909, drew or caused to be drawn a lease of each and all of said mining claims to B. F. Millard, said Millard having theretofore become the assignee by mesne conveyances, of the option to lease the said mining claims of defendant granted to said Crane on the 5th day of June, 1909, as above stated, a copy of which said lease to B. F. Millard is attached to plaintiffs' complaint herein and marked Plaintiffs' Exhibit "C"; that at the time of the execution of said lease to said Millard, this defendant remonstrated with said plaintiffs Treat and Smith against the description in said lease of said Treat and Smith as owners of an interest in said mining

claims, at which time said Smith assured this defendant, as his, defendant's, attorney, that such description of said Treat and Smith was merely for the purpose of assuring to said Treat and Smith the percentage of royalties by defendant agreed to be transferred to them, that it was necessary for said Treat and Smith to be described in said lease as such owners in order that said Smith, in accordance with his agreement so to do, might at all times protect the interests of this defendant under said lease, and that he might also protect the interest of said Treat and Smith thereunder; and said Smith further stated that nothing in said lease contained would serve to convey to, or to give to said Treat or to said Smith, any right or interest in or to said mining [44] claims, or in and to any machinery or other property placed upon said mining claims, and said Smith specifically represented to defendant that the only right said Treat and Smith acquired by virtue of said lease was the amount of royalty in said lease set forth as to be paid to said Treat and Smith, and that at the termination of said lease the said instrument would be void and of no further effect; and that relying upon the said assurances and representations of said Smith this defendant, on the 23d day of July, 1909, executed the contract of lease to said Millard, described in Plaintiffs' Exhibit "C";

Fifth. That, after the execution of the aforesaid option of lease, of June 5, 1909, and prior to the execution of the contract of lease to B. F. Millard, of July 23d, 1909, this defendant requested plaintiff Treat to satisfy of record the mortgage executed.



and delivered by defendant to said Treat, as set forth in paragraph IV of this answer; and at or about the same time defendant requested said Treat and Smith to surrender and cancel the agreement and mortgage entered into on the 15th day of May, 1907, between this defendant and said Treat and Smith, and described in plaintiffs' complaint as "a contract in writing concerning 'Mystic No. 1' lode claim," a copy of which said contract and mortgage is attached to said complaint, marked Plaintiffs' Exhibit "A," and that said plaintiff Treat and said plaintiff Smith, agreed, when so requested as aforesaid by defendant, to see that said mortgage, delivered to said Treat by said defendant as aforesaid, was satisfied of record, and to cancel and surrender to defendant the said contract and mortgage entered into on the 15th day of May, 1907, between defendant and said Treat and Smith, but that said Treat and Smith wholly failed and neglected to satisfy of record the said mortgage, or to cancel and surrender the said contract and mortgage of May 15th, 1907, and when again thereafter requested so to do, said Treat and Smith informed this defendant that it would be soon enough to cancel said instruments when the plaintiffs Treat and Smith had been fully reimbursed all money advanced by them to [45] defendant, out of the royalties to be paid under the terms of the aforesaid lease to B. F. Millard, of July 23, 1909; that during the life of said lease to B. F. Millard, and under the agreement entered into between this defendant and plaintiffs Treat and Smith on the 5th day of June, 1909, as set forth in the Third para-

graph of this affirmative defense, the plaintiffs Treat and Smith have received in royalties from the Cliff Mining Company more than Seven Thousand Dollars, but that said Treat and Smith have never satisfied of record the aforesaid mortgage, nor cancelled or surrendered the aforesaid contract and mortgage, of May 15th, 1907, nor released this defendant from the obligations of either of said instruments by any written release.

Sixth. That said plaintiff Smith has been absent from the Territory of Alaska for more than a year prior to the termination of said lease and the cessation to operate thereunder by the said Cliff Mining Company, and during said absence from the Territory of Alaska, said Smith has failed and neglected to protect the interests of this defendant in matters pertaining to said lease and to said royalties.

That the only right or interest ever owned or held by plaintiffs Treat and Smith, in or to the said mining claims, or any of them, since the 5th day of June, 1909, was a right to receive, each of them, seven and one-half per cent of the total royalties paid under the terms of, and during the life of said lease, which said interest or right of said plaintiffs Treat and Smith this defendant has at all times acknowledged; and that the only interest of the plaintiff Archibald in or to said mining claims is such interest as said Archibald may have acquired in or to the royalties payable to said Smith under the terms of, and during the life of, said lease.

WHEREFORE, this defendant, having fully answered the plaintiffs' complaint herein and having:

shown matters in defense of said suit, which this defendant asks may be declared and held to be a complete bar to the relief asked for herein, this defendant [46] prays (1) that a judgment may be entered dismissing said complaint, with costs against the plaintiffs; and (2) for such other and further relief as may be just and equitable in the premises.

CHAS. G. GANTY,  
Attorney for Defendant.

United States of America,  
Territory of Alaska,—ss.

I, H. E. Ellis, being first duly sworn, depose and say: That I am the defendant named in the above-entitled action and that the foregoing answer has been read by me and the same is true as I verily believe.

H. E. ELLIS.

Subscribed and sworn to before me this 26th day of June, 1915.

[Seal]

CHAS. G. GANTY,  
Notary Public.

My commission expires Oct, 21st, 1917.

United States of America,  
Territory of Alaska,—ss.

This is to certify that the foregoing is a true and correct copy of the original herein and of the whole thereof.

Dated this 26th day of June, A. D. 1915.

ANTHONY J. DIMOND,  
One of Attorneys for Plaintiffs.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. June 28, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [47]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Motion to Strike Portions of Answer.**

Come now the above-named plaintiffs and move this Honorable Court for an order to strike from the affirmative answer of the defendant herein the following:

I.

The following quoted portion of the second paragraph of defendant's said affirmative answer, beginning with the fourth word of the fourth line of said paragraph from the top of page ten of the answer and ending with the second word ("contract") on the twenty-fifth line of said page ten, on the ground that the same is sham, frivolous and irrelevant and redundant:

"At which times said plaintiffs states that they could quickly and easily sell sufficient of the treasury stock of such a corporation to finance

the accomplishment of all of said purposes, and that they, said Treat and Smith, knew persons in Valdez, Alaska, who would buy said stock, and at the time the contract described and set forth in paragraph V of plaintiffs' complaint was entered into, said Treat and Smith represented and promised to this defendant that they would and could, within a few days after the execution of said contract, secure subscriptions for the sale of sufficient of the treasury stock of the company to be formed under the terms of said contract, to finance the development and mining operations on said claims and to build a reduction works thereon, and said Treat and Smith at said time further promised and agreed that immediately after the execution of said contract they would proceed to secure such subscriptions to said stock and to comply with all the terms of said contract, and that defendant entered upon said contract relying upon and in consideration of said promises and representations of said plaintiffs Treat and Smith. [48]

That said Treat and Smith failed utterly to secure the subscriptions to the treasury stock of said corporation by them agreed to be secured, and failed to carry out any of the terms of said contract."

## II.

The following quoted portion of said second paragraph of defendant's affirmative answer, beginning with the fifth word ("that") on the ninth line from the top of page 11 of said answer and ending with



the word "plaintiffs" on the seventeenth line from the top of said page 11, on the ground that the same is sham, frivolous, irrelevant and redundant:

"That about two months after the execution of said contract of July 9, 1908, plaintiffs Treat and Smith informed this defendant that they could not carry out their part of said contract and thereafter, in the fall of 1908, plaintiffs, Treat and Smith, asked this defendant to pay them the money he owed them, if possible, and urged defendant to sell his said mining claims in order that he might be enabled to repay them said money from the proceeds of such sale; that defendant refused to sacrifice his said property as requested by said plaintiffs."

### III.

The following quoted portion of the said second paragraph of defendant's affirmative answer, beginning with the word "but" in the seventeenth line from the top of page 11 of said answer, and ending with the word "effect" in the third line from the bottom of said page 11, on the ground that the same is sham, frivolous, irrelevant and redundant:

"but specifically agreed to and with plaintiffs Treat and Smith that said contract of July 9, 1908, should be abandoned and that said Treat and Smith should hold the mining claims and said real property of defendant as security for the money formerly owing by defendant to said Treat and Smith, from the payment of which said money defendant was to have been released under the terms of said contract of



July 9, 1908, and it was thereupon mutually understood and agreed, by and between this defendant and said plaintiffs Treat and Smith that in consideration of the mutual abandonment of said contract and all rights thereunder, the liens theretofore held by said Treat and Smith against the property of defendant were revived and that all of said parties stood mutually as if said contract of July 9, 1908, had never been entered into, and that the same was void and of no further effect.”

Dated at Valdez, Alaska, this 10th day of July, 1915.

DONOHUE & DIMOND and  
LYONS & RITCHIE,

Attorneys for the Plaintiffs. [49]

Service of the foregoing motion to strike acknowledgment this 10th day of July, 1915, by receiving a copy of the same duly certified to by Anthony J. Dimond, one of plaintiffs' attorneys.

CHAS. G. GANTY,  
Attorney for the Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jul. 12, 1915. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [50]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Order on Plaintiffs' Motion to Strike.**

This matter coming on regularly to be heard on motion of plaintiffs for an order of this Court to strike certain portions of defendant's affirmative answer on the ground that the same is sham, frivolous, irrelevant and redundant matter, and both plaintiffs and defendant being represented in court by their respective attorneys of record, and the Court having heard their arguments, and being fully advised in the premises, therefore,

IT IS ORDERED that the first portion of plaintiffs' motion to strike from the second paragraph of defendant's affirmative answer, beginning with the sixth word on the second line of page 10 of said affirmative answer, and ending with the word contract on the 25th line of said page 10, as follows:

“At which times said plaintiffs states that they could quickly and easily sell sufficient of the treasury stock of such a corporation to finance the accomplishment of all of said purposes, and that they, said Treat and Smith, knew persons

in Valdez, Alaska, who would buy said stock, and at the time the contract described and set forth in paragraph V of plaintiffs' complaint was entered into, said Treat and Smith represented and promised to this defendant that they would and could, within a few days after the execution of said contract, secure subscriptions for the sale of sufficient of the treasury stock of the company to be formed under the terms of the contract, to finance the development and mining operations on said claims and to build a reduction works thereon, and that said Treat and Smith at said time further promised and agreed that immediately after the execution of said contract they would proceed to secure such subscriptions to said stock and to comply with all the terms of said contract, and that defendant entered upon said contract relying upon and in consideration of said promises and representations of said plaintiffs Treat and Smith.

That said Treat and Smith failed utterly to secure the subscriptions to the treasury stock of said corporation by them agreed to be secured, and failed to carry out any of the terms of said contract,"

is hereby granted, and the above-quoted portion of said affirmative answer is hereby ordered stricken from said answer. [51]

It is further ordered, that the remaining portion of plaintiffs' said motion be and the same is hereby denied.

The defendant hereby excepts to the ruling of the

Court in striking said portion of defendant's affirmative answer, and the plaintiff hereby excepts to the ruling of the Court in denying the remaining portion of plaintiffs' said motion to strike, and both of said exceptions are hereby allowed.

Done in open court at Valdez, Alaska, this 28th day of August, 1915.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Aug. 30, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page 229. [52]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Reply.**

Now come the plaintiffs by their attorneys and for reply to defendant's answer filed herein say:

That they deny each and every, all and singular, the allegations and averments contained in said answer excepting so far as the same are consistent with the allegations of plaintiffs' complaint.

Wherefore plaintiffs pray for the relief asked in their complaint.

DONOHOE & DIMOND and  
LYONS & RITCHIE,  
Attorneys for Plaintiffs.

United States of America,  
Territory of Alaska,—ss.

Geo. C. Treat, being duly sworn, says he is one of the plaintiffs in this suit; that he has read the foregoing answer and he believes the same to be true.

GEO. C. TREAT.

Subscribed and sworn to before me this 2d day of September, 1915.

JOHN LYONS,  
Notary Public.

My commission expires Nov. 27, 1916.

Service of copy admitted Sept. 2, 1915.

CHAS. G. GANTY,  
Atty. for Deft.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Sep. 3, 1915. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [53]



## [Opinion.]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEORGE C. TREAT, EDMUND SMITH and  
LOGAN ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

## DECISION.

On May 15, 1907, the defendant Ellis, being the owner of the Mystic lode mining claim, situated on Valdez Bay, entered into an agreement with plaintiffs Treat and Smith whereby they advanced the sum of \$500 for extracting and shipping about five tons of ore from said mining claim to a smelter outside of Alaska.

This agreement, which was in writing, provided that Treat and Smith were to receive back their \$500 and also one-quarter of the net smelter returns, and in case said smelter returns were not sufficient to repay said \$500, said Treat and Smith were to have a lien on the said mining claim to secure the said \$500. The smelter returns did not pay the freight and smelter charges.

Nothing further was done until the 9th day of July, 1908, when the same parties entered into an agreement in writing whereby the defendant Ellis was to deed eight gold mining claims, including the

said Mystic gold mining claim (seven other mining claims evidently having been located by defendant Ellis since May 15, 1907,) to a corporation to be called the Mystic Gold Mining Company. All the capital stock of said corporation was to be issued to Ellis as owner, and he was to transfer to Treat and Smith 20% of the capital stock of said corporation and turn over to the treasury of the corporation 20% of the capital stock, to be sold to pay for development on said [54] claims and establishing a reduction plant on said claims.

In consideration of the 20% of the capital stock issued to Treat and Smith, they agreed to "pay all expenses of incorporating the said company, recording and filing of necessary papers thereon, and receipt in full all claims that said Treat and Smith, or either of them, have against said Ellis"; also Treat and Smith were to give their time and attention in selling the amount of the treasury stock necessary to be sold, and "to give whatever time and attention that may be necessary to the proper organization of said corporation and the sale of said stock."

Mr. Smith, who is an attorney at law, prepared the Articles of Incorporation in quadruplicate, and certain written agreements which Mr. Ellis signed, agreeing to deed to the corporation 20% of the capital stock.

It appears that the said parties were unable to sell any of the stock of said corporation, and no stock was ever issued. The Articles of Incorporation, though signed, were not filed, and the matter rested

until June 5, 1909, when one A. J. Crane secured an option on said mining claims, giving him the right to lease the same for a period of six years. For the first year 20% of the net product of said mining claims and for the remaining five years 25% of the net proceeds of said mining claims was to be paid to the lessors, Ellis, Treat and Smith.

In this option it is further provided that 85% of the said royalty was to be paid to Ellis and 15% to be paid to said Treat and Smith during the life of said lease. The lessee was to erect suitable reduction works on said mining claims and all machinery and improvements were to revert to the owners of said mining claims at the expiration of said lease.

[55]

Said Crane did not carry out the said option but on the 23d of July, 1909, one B. F. Millard, Trustee, who had purchased all the rights of said Crane under said option for the sum of \$400 entered into a lease with the said Ellis, Treat and Smith pursuant to the terms of said option made to the said Crane. This lease to Millard, dated July 23, 1909, provides:

“This Indenture made this 23d day of July, A. D. 1909, between H. E. Ellis, four-fifths owner, George C. Treat and Edmund Smith, each owning ten per cent, all of Valdez, Alaska, parties of the first part, and lessors, and B. F. Millard, Trustee, of Valdez, Alaska, party of the second part, and lessee, Witnesseth”:

The said lessee, Millard, formed a company, called the Cliff Gold Mining Company, erected a stamp mill on said property and mined and milled the ore there-

from with great success, defendant Ellis receiving for his 85% of the royalty something over \$50,000 and plaintiffs Treat and Smith for their 15% of the royalty something like \$7,000. The said lessee quit and surrendered up the possession of said premises under said lease about July, 1914.

The controversy between the parties to this case is whether plaintiffs Treat and Smith have any interest in the said mining claims, including the improvements and machinery situate thereon, or whether they contracted to accept 15% of the royalty payable under the terms of said lease, in return for such interest in said mining claims as they may have owned, legally and equitably, on June 5, 1909, the date of the option agreement to Crane. Plaintiffs Treat and Smith contend that under the agreement to incorporate, dated July 9, 1908, they satisfied their joint claim against Ellis for the \$500 advanced to test the original five tons of ore, and also another indebtedness of some \$261 held by said Treat against said Ellis for a loan theretofore made him.

The undisputed testimony shows that in addition to said \$500 so advanced by Treat and Smith, Ellis did owe said Treat on the 9th [56] day of July, 1908, an indebtedness of \$200, with interest, amounting in all to about \$261, and Smith testifies that he paid Treat one-half of this amount.

The plaintiffs Treat and Smith testify that at the time of entering into the option agreement with Crane, they were the equitable owners of a one-fifth interest in said mining claims, by virtue of said

agreement of July 9, 1908, wherein they were to have 20% of the capital stock of the corporation to be formed as above stated.

In addition to the recitals in the said lease to Millard as to the Treat and Smith ownership, there were various protests in writing, introduced in evidence, served by the lessors Ellis, Treat and Smith, upon the Cliff Gold Mining Company, objecting to certain charges levied against them for improvements made on said property. Several of these written protests are introduced in evidence, all signed by Ellis, Treat and Smith, as owners and lessors.

The plaintiffs Treat and Smith testify that at the time of entering into the Crane option, they claimed, and it was never objected to by the defendant Ellis, that they were entitled to a one-fifth interest in said mining property; that the reason why they agreed to take 15% of the royalty instead of 20% was that the defendant Ellis thought that the royalty was not sufficient and they were willing to surrender 5% of their royalty in order to satisfy Ellis and thus bring about the making of said option and lease, which they considered advantageous, but they insist that at no time did they agree to release or surrender their right to an equitable interest in said property itself, to wit, a one-fifth interest therein.

The defendant Ellis, on the contrary, insists that Treat and Smith on the day of entering into the option agreement with Crane agreed to surrender all of their interest and claim in and to said [57] mining property in consideration of their being paid



the said 15% of the royalty to be received from the operation of said mine under the lease.

Defendant Ellis relies in support of this contention upon a letter introduced in evidence by him, as follows:

“Valdez, Alaska, June 5th, 1909.

Mr. H. E. Ellis,  
City.

Dear Sir:

In answer to your inquiry as to what we would take or accept for our fifth interest in the Gold Lode Mining Claims, located by you on North side of Valdez Bay, will say:

That we will accept fifteen per cent net of royalty on lease of property provided the contract of lease is satisfactory, or we will accept twelve thousand five hundred dollars in cash net for our interest in said property.

Very truly yours,  
(Signed) GEO. C. TREAT.  
EDMUND SMITH.”

This letter is construed by the defendant to mean that the plaintiffs Treat and Smith made, and intended to make, an offer to surrender up all their claim to a one-fifth interest in return for said 15% of the royalty. This letter standing alone might be susceptible to such a construction, as it is somewhat ambiguous in that respect. One thing, however, is clear, and I think the defendant is bound by it, having relied upon and introduced this letter, and that is, at the time of writing this letter the plaintiffs Treat and Smith were the equitable owners of a one-

fifth interest in and to the said mining claims and so recognized by defendant Ellis.

At the time of making the lease to Millard, the lease expressly states that Treat and Smith are each the owners of a one-tenth interest. This, taken together with the written protests signed by Ellis, Treat and Smith, wherein they each assume to be owners and lessors, seems to overcome any doubtful construction that might be given to the said letter signed by Treat and Smith on June 5, 1909. [58]

There is another piece of evidence that is strongly against the defendant's claim in this case. On December 4, 1914, the plaintiff Treat wrote a letter to defendant Ellis, who was then in Denver, Colorado and had been absent from Valdez for nearly a year, calling his attention to the fact that the lease had been surrendered and there was an opportunity to lease the property again, and asking Ellis to write him what he was willing to do. To this letter the defendant Ellis replied as follows:

“1-21-15.

310 Ideal Bldg., Denver, Colo.

Mr. Geo. C. Treat,

Valdez, Alaska.

Friend George:

Yours of Dec. 4 recd. some time since and have put off answering on acc't. of the unsettled nature of things, not knowing whether I would be able to go North immediately or not.

The way things are going I don't know just when I will get started. In regard to a lease I will let

that wait until I get North to make an examination of the property.

Sincerely Yours,

(Signed) H. E. ELLIS."

If the defendant at the time of writing this letter, January 21, 1915, had believed, as he now claims to believe, that he was the sole owner of said property, it does not seem reasonable or natural that he would have written a reply to the letter of Mr. Treat, without making some objection to Treat's clear intimation that he was interested in the further leasing and working of the property.

It seems plain to me that the real essence of this case, the real claim and contention of the defendant, arises not so much from a dispute concerning the facts, as it does over the construction which he now desires to give to the agreement entered into between these parties on the 8th day of July, 1908, wherein it was agreed that Treat and Smith "were to give their time and attention in selling the amount of treasury stock necessary to be sold." Ellis contends that because the financial conditions were such that such treasury stock [59] could not be sold, that the plaintiffs Treat and Smith failed in their obligation and were relegated to their money demand against him, and this, in spite of his later repeated admissions in writing as to the ownership of Treat and Smith of a one-fifth interest.

It will be noticed in this contract for the incorporation of the Mystic Gold Mining Company the plaintiffs Treat and Smith did not positively agree to sell one share of stock, but merely to give their

time and attention in selling the same. A proper, or at least an adequate consideration seems to be the canceling of an indebtedness against Ellis of some \$761 and this brings us down to a consideration of the real equity in this case, as a matter of fairness and adequacy of consideration.

The defendant Ellis, having become used to the receipt of large sums of money in royalty, is evidently much less impressed with the importance of so small an amount as \$500 than he was in May, 1907, when he needed that sum to get a mill test of said property, to ascertain what, if any, value the property had. He refers to this sum as being a "measly \$500" and yet, it might well have been, for all that was then known, that the \$500, was more than the property was worth.

Counsel for the defendant earnestly insists that Ellis is the discoverer of this property and ought to be entitled to all of it, and yet it may be that if it were not for this \$500 advanced by Treat and Smith, that the Cliff mine would be absolutely unknown and unworked to-day.

It seems that there are strong equities in favor of the plaintiffs in this regard. Counsel for the defendant says that the lessee, B. F. Millard, knew this property was of immense value and as the testimony shows, when he went upon it, he said that Ellis had not told him the hundreth part of it, and yet, notwithstanding this, [60] he was given the first opportunity to secure the property but permitted Crane to take it up first. Then later, Crane, who had also been upon and examined the property could

not or did not raise the money to do anything with the property and Millard secured the assignment of his option for so comparatively small a sum as \$400. This does not look as though the property was actually known to be of any great value at that time.

The uncertainties of prospects and mining claims are well known. A property may disclose some very rich surface ore and yet not justify the expenditure of very much money, for either the placing of a mill, or development work upon it.

I can well understand how the defendant Ellis has come to believe very sincerely that he is right in this contention, but it seems clear to me that it is more through his interpretation of the agreement to incorporate than anything else; that he feels that Treat and Smith did not keep their part of the contract because they did not sell the treasury stock and he further feels that they forfeited any right they might have to the specific performance of that agreement. That may be true and yet the plaintiffs be entitled to an equitable interest in said property. Where the party to an action bases his claim, as is sometimes done, on the interpretation or legal effect to be given a contract, he is very apt to construe it in his own favor and be unable to see the other side. An instance of this kind is shown in the interpretation of the lease to Millard, where the defendant Ellis insists that the lessee, Millard, or the Cliff Gold Mining Company, should pay all the expenses of defending a lawsuit by some one claiming the said mining ground adversely to Ellis. It does not seem to me that there is any warrant for such a construction



of any provision in the lease to Millard. There is a provision that they are to keep any one from taking possession of the [61] property, but this, in the absence of clear proof to the contrary, would certainly only apply to trespassers and intruders and not to defend a lawsuit with one claiming to own the property as against the lessors.

I feel satisfied from a careful consideration of all the evidence in this case that the plaintiffs' contention is just and fair and that the defendant has shown in his letter to Treat of January 21, 1915, that he has never come out openly and objected to their claim, but has rather held a sort of mental reservation that he could defeat their claims whenever he wanted to.

I have not thought it necessary to review the oral testimony given in this case, as the written evidence seems to me to be sufficient upon which to base a decision.

The burden of proof is upon the plaintiff to make out his case. In this case, however, the written evidences of plaintiffs' right, in the way of written admissions and acknowledgments on the part of the defendant, are so strong and convincing, that it would seem as though the burden of proof should shift to the defendant to explain away these admissions against interest. This I am not satisfied he has done. I am satisfied that the plaintiffs have made out their case by a preponderance of the evidence.

Counsel for defendant intimates that the defendant is unacquainted with law or business affairs. I

cannot believe that a man of the more than average intelligence of the defendant could have been so misled and deceived as he claims to be. He seems to be fully capable of taking care of himself in any dealings he has shown to have been interested in, and as before said, there is nothing unfair or unconscionable in the plaintiffs' claim for the interest which it is evident their investment of money, when this property was an unknown prospect, may have been and in all human probability was the means of enabling defendant to open it up and develop it into the [62] paying property it afterwards became.

I can come to no other conclusion than that the plaintiffs have judgment as prayed for. Findings and decree may be prepared accordingly.

Dated at Valdez, Alaska, October 13, 1915.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 13, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, Page No. 347. [63]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs;

vs.

H. E. ELLIS,

Defendant.

**Findings of Fact and Conclusions of Law.**

This cause coming on regularly for trial on the 4th day of October, 1915, before the Court, without a jury, Messrs. Donohoe and Dimond and Lyons & Ritchie appearing as counsel for the plaintiffs, and Chas. G. Ganty appearing as counsel for the defendant, and the Court having heard all the testimony offered by plaintiff and defendant, and having heard the arguments of counsel for the respective sides, and having taken the matter under advisement, and on the 13th day of October, 1915, having rendered his decision in said cause in favor of the plaintiffs in accordance with the prayer of their complaint and against said defendant, NOW MAKES AND FILES his Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT.****I.**

The Court finds that on the 15th day of May, 1907, the defendant was the sole and legal owner of those certain eight (8) lode mining claims, situate on the northerly [64] side of Valdez Bay, between Gold Creek and Shoups Bay in the Valdez recording precinct, Territory of Alaska, named and described as follows:

The Mystic No. 1 lode claim, notice of location of which is of record in Book K of Mining Locations, at page 506, of the records of said Valdez recording precinct, at Valdez, Alaska.

The Mystic No. 2 lode claim, notice of location

thereof being of record in said Book K, at page 505, of said records.

The Mystery No. 1 lode claim, notice of location thereof being of record in Book O of Mining Locations, at page 452, of said records.

The Mystery No. 2 lode claim, notice of location thereof *being record* in said Book O, at page 453, of said records.

The Mystery No. 3 lode claim, notice of location thereof being recorded in said Book O, at page 605, of said records.

The Parallel No. 1 lode claim, notice of location thereof being of record in said Book O, at page 607, of said records.

The Parallel No. 2 lode claim, notice of location thereof being of record in said Book O, at page 606, of said records.

The High Bar lode claim, notice of location of which is of record in said Book O, at page 451, of said records.

That the legal title to each and all of said mining claims ever since the said 15th day of May, 1907, has been and now is in the name of said defendant.

## II.

That on the 15th day of May, 1907, the defendant Ellis and plaintiffs Treat and Smith entered into a contract, in writing, whereby plaintiffs Treat and Smith advanced to defendant Ellis the sum of \$500 for the purpose of enabling the said Ellis to develop said mining claims and ship ore therefrom and under the terms of said contract, among other things, plaintiffs Treat and Smith were given a mortgage on said

mining claims to secure them for the repayment of said \$500. [65]

### III.

That on the 9th day of July, 1908, defendant Ellis was then indebted to plaintiffs Treat and Smith for said sum of \$500 and was indebted to plaintiff Treat in the further sum of \$261; that on said date defendant Ellis and plaintiffs Treat and Smith entered into a written contract concerning said mining claims wherein and whereby it was agreed by and between the parties thereto to organize a corporation under the laws of Alaska for the purpose of owning and operating said mining claims, and it was agreed in said contract that upon its organization that the said Ellis would deed to said corporation all of said mining claims in consideration of said corporation issuing to him the full amount of its capital stock, and he, the said Ellis, would thereupon transfer to plaintiffs Treat & Smith twenty per cent (20%) of said capital stock, and that he, the said Ellis, would also surrender twenty per cent (20%) of said capital stock to said corporation to be used as treasury stock of said corporation, and thereupon plaintiffs Treat and Smith released and satisfied their claim against the said defendant Ellis for the said sum of \$500, and plaintiff Treat satisfied and released the said Ellis from the further claim that he then held against him amounting to \$261.

### IV.

That shortly thereafter said defendant Ellis and said plaintiffs Treat and Smith made and executed articles of incorporation of said corporation but on



account of them being unable to secure subscriptions for the treasury stock of said corporation said articles of incorporation were not filed; that during the time intervening between the 9th day of July, 1908, and the 5th day of June, 1909, plaintiffs Treat and Smith were [66] at all times ready and willing and able to perform their part of the contract of July 9th, 1908, and during said time made repeated and many efforts to interest parties in said corporation and to sell the treasury stock of said corporation.

## V.

That on the 5th day of June, 1909, one A. J. Crane was interested in said mining claims and proposed to take an option for a six years' lease on said mining claims, under the terms of which lease the said Crane was to pay to the owners of said mining claim twenty per cent (20%) royalty for the first year and twenty-five per cent (25%) royalty for the remaining years of said lease; that on said date, and previous to entering into said option contract with the said Crane, the defendant and plaintiffs Treat and Smith, held several conferences and discussions in regard to their respective interests in said property; that on said date, and before the execution of the option contract, with said Crane the said defendant Ellis and said plaintiffs Treat and Smith agreed that the said plaintiffs Treat and Smith owned an equitable one-fifth ( $1/5$ ) interest in each and all of said mining claims, and thereupon, in order to induce the said defendant Ellis to enter into said option contract with the said Crane, the said plaintiffs

Treat and Smith agreed that during the life of said lease they would accept as the royalty for their said one-fifth ( $1/5$ ) interest in each and all of said mining claims, fifteen per cent (15%) of the royalty to be paid instead of twenty per cent (20%) which they would be entitled to as owners of an undivided one-fifth ( $1/5$ ) interest in each and all of said claims; that [67] thereupon the said defendant Ellis agreed that the plaintiffs Treat and Smith owned an undivided one-fifth ( $1/5$ ) interest in and to all of said mining claims, and thereafter, and on said date, said defendant Ellis and said plaintiffs Treat and Smith, as owners of said mining claims, entered into said option contract with the said A. J. Crane.

That thereafter one B. F. Millard purchased of the said A. J. Crane said option contract, and on the 23d day of July, 1909, entered into a lease pursuant to the terms and conditions of said option contract with the said defendant Ellis and said plaintiffs Treat and Smith, in which lease it was specifically stated that the said defendant H. E. Ellis owned a four-fifths interest ( $4/5$ ) in and to each and all of said eight mining claims, and said plaintiff Geo. C. Treat owned an undivided one-tenth ( $1/10$ ) interest in and to each and all of said mining claims and said plaintiff Edmund Smith owned an undivided one-tenth ( $1/10$ ) interest in and to each and all of said eight mining claims, which said lease was made, executed and delivered by the said defendant Ellis and said plaintiffs Treat and Smith as owners in the proportions above stated of said mining claims and as lessors in said lease.

That shortly thereafter the said B. F. Millard sold, assigned and transferred said lease to the Cliff Mining Company, a corporation, and thereupon the said Cliff Mining Company went into possession of each and of all of said mining claims and mined and operated the same pursuant to the terms of said lease and until on or about the month of July, 1914. That during the time the said Cliff Mining Company was so operating the said property the lessors in said lease at many and various times served written notices upon the said Cliff Mining Company, all of which said notices were signed by the defendant Ellis and [68] by plaintiffs Treat and Smith and each and all of said notices recited that the signers thereof were the owners of each and all of said mining claims.

That under the terms of said lease the lessee, B. F. Millard and his assignee, the Cliff Mining Company, agreed and stipulated that all machinery, tools, equipment, buildings and other improvements placed upon said mining claims during said lease should remain upon the said property at the expiration thereof and become the property of the owners or lessors named in said lease; that while the said Cliff Mining Company was so operating said mining claims it placed upon the same a large quantity of machinery, tools and equipment, buildings and other improvements of the value of more than \$25,000, and the same was left upon said property when the said Cliff Mining Company surrendered said lease and said mining claims to the lessors named in said lease, and said machinery, tools, equipment, buildings and

other improvements are now upon said claims.

## VI.

That on or about the 3d day of January, 1913, plaintiff Logan Archibald purchased from plaintiff Edmund Smith an undivided one-half ( $\frac{1}{2}$ ) interest of the said Edmund Smith's interest in and to each and all of said mining claims and is entitled to all the rights and privileges accruing to the said Smith by reason of contracts heretofore mentioned and set out in plaintiff's complaint, including the lease dated July 23, 1909, and that the said plaintiff Logan Archibald is now, and ever since the 3d day of January, 1913, has been the owner of a one-half interest in and to all of said property belonging to said plaintiff Smith.

## VII.

That defendant Ellis during all the time between the 9th day of July, 1908, and the month of February, [69] 1915, did not in any manner dispute the claim of plaintiffs to an ownership of an undivided one-fifth interest in and to each and all of said mining claims and in and to all the machinery, tools, equipment, buildings and other improvements placed thereon by the said Cliff Mining Company; that since the month of February, 1915, the defendant Ellis has denied, and still denies, the right and title of plaintiffs, and each of them, in and to any interest whatever in said mining claims or the said machinery, tools, equipment, buildings and other improvements placed thereon.

Made and filed this 16th day of October, 1915.

FRED M. BROWN,

Judge.



## CONCLUSIONS OF LAW.

From the foregoing Findings of Fact the Court makes the following Conclusions of Law:

## I.

That by virtue of the contract of the 9th day of July, 1908, plaintiffs George C. Treat and Edmund Smith each became the equitable owner of an undivided one-tenth ( $1/10$ ) interest in and to each and all of the mining claims *descriing* in Finding No. 1, and in plaintiff's complaint, and that defendant George C. Treat ever since has been, and now is, the equitable owner of an undivided one-tenth ( $1/10$ ) interest in and to each and all of said mining claims and in and to all the machinery, [70] tools, equipment, buildings and other improvements thereon. That from the 9th day of July, 1908, until on or about the 3d day of January, 1913, plaintiff Edmund Smith was the owner of an undivided one-tenth ( $1/10$ ) interest in and to each and all of said mining claims; that on the 3d day of January, 1913, the said Edmund Smith, by deed, conveyed to plaintiff Logan Archibald an undivided one-half of his interest in and to each and all of said mining claims; that ever since the 3d day of January, 1913, the said Edmund Smith and the said Logan Archibald have been, and now are, each the owner of an undivided five per cent (5%) or a one-twentieth ( $1/20$ ) interest in and to each and all of said mining claims, the machinery, tools, equipment, buildings and other improvements thereon, and that said plaintiffs should be decreed to be such owners in said property.



## II.

That it be decreed that defendant within ten (10) days from the entry of decree be required to convey to plaintiff George C. Treat an undivided one-tenth ( $1/10$ ) interest in all of said property, and to Edmund Smith an undivided one-twentieth ( $1/20$ ) interest in all of said property, and to plaintiff Logan Archibald an undivided one-twentieth ( $1/20$ ) interest in all of said property, and that in case said defendant fails or neglects to make, execute and deliver such a conveyance then that said decree, shall upon being recorded, constitute and be a conveyance of said respective interests to said plaintiffs.

## III.

That defendant H. E. Ellis, his agents, attorneys and employees, be forever enjoined and restrained from disputing [71] or in any manner contesting the rights of each of said parties to the interest in said property as heretofore stated, and that they, and each of them, be also forever enjoined from denying plaintiffs, and each of them, the right of possession and enjoyment of said property.

## IV.

That plaintiffs have judgment against defendant for their costs and disbursements in this suit.

Done in Open Court this 16 day of October, 1915.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 16, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page 362. [72]

*In the District Court for the Territory of Alaska  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Decree.**

This cause coming on regularly for trial on the 5th, 6th and 7th days of October, 1915, before the Court sitting as a Court of Equity. Donohoe & Dimond and Lyons & Ritchie appearing for plaintiffs and Chas. G. Ganty appearing for the defendant; and the Court having heard all the evidence and the argument of counsel for the respective parties, and reserving his decision for a future date; and having fully considered the matter; on the 13th day of October, 1915, filed his decision in writing in said cause; and on the —— day of October, 1915, having duly made, entered and filed in writing his Findings of Fact and Conclusions of Law:

NOW THEREFORE, in accordance with said decision and said Findings of Fact and Conclusions of Law, it is ORDERED, ADJUDGED and DECREED, as follows:

First. That plaintiff George C. Treat is the owner of [73] and entitled to the immediate possession of an undivided one-tenth (1/10) interest; that

plaintiff Edmund Smith is the owner of and entitled to the immediate possession of an undivided one-twentieth ( $1/20$ ) interest; that plaintiff Logan Archibald is the owner of and entitled to the immediate possession of an undivided one-twentieth ( $1/20$ ) interest; all in and to those eight (8) certain lode mining claims situated on the northerly side of Valdez Bay between Gold Creek and Shoups Bay in the Valdez Recording Precinct, Territory of Alaska, named and described as follows:

The Mystic No. 1 lode claim, notice of location of which is of record in Book K of Mining Locations, at page 506 of the records of said Valdez recording precinct, at Valdez, Alaska.

The Mystic No. 2 lode claim, notice of location thereof being of record in said Book K, at page 505, of said records.

The Mystery No. 1 lode claim, notice of location thereof being of record in Book O of Mining locations, at page 452 of said records.

The Mystery No. 2 lode claim, notice of location thereof being recorded in said Book O, at page 453, of said records.

The Mystery No. 3 lode claim, *note* of location thereof being recorded in said Book O, at page 605, of said records.

The Parallel No. 1 lode claim, notice of location thereof being of record in said Book O, at page 607, of said records.

The Parallel No. 2 lode claim, notice of location thereof being of record in said Book O, at page 606, of said records.

The High Bar lode claim, notice of location of which is of record in said Book O, at page 451 of said records, together with all machinery, equipment, tools, buildings and improvements of every kind and nature now upon said mining claims or either of them.

Second. That defendant H. E. Ellis be, and he is hereby, required within 10 days from the entry of this decree to convey to plaintiff George C. Treat an undivided one-tenth ( $1/10$ ) interest in and to all of said property; to Edmund Smith an undivided one-twentieth interest in and to all of said property and to Logan Archibald an undivided one-twentieth interest in and to all of [74] said property; and in case that said defendant H. E. Ellis fails or neglects to make, execute and deliver such a conveyance then that this decree shall stand in lieu thereof and shall be of the same force and effect for the purpose of vesting in each of the said parties, to wit, Geo. C. Treat, an undivided one-tenth ( $1/10$ ) interest; Edmund Smith, an undivided one-twentieth ( $1/20$ ) interest; and Logan Archibald an undivided one-twentieth ( $1/20$ ) interest; all in and to each and all of said mining claims, together with all the machinery, tools, equipment and improvements thereon, and that this decree shall have the purpose of said conveyance, being treated as a deed properly executed and delivered by the said H. E. Ellis to the said Geo. C. Treat, Edmund Smith and Logan Archibald for their respective interest in the property hereinbefore described.

Third. That defendant H. E. Ellis, his agents, at-

torneys and employees are hereby and forever enjoined and restrained from in any manner contesting the rights of said Geo. C. Treat, Edmund Smith and Logan Archibald to their interests in said property as heretofore stated and that they, and each of them, be forever enjoined from denying the rights of the said Geo. C. Treat, the said Edmund Smith, and the said Logan Archibald, or their heirs or assigns the right of possession and enjoyment of said property.

Fourth. That the said H. E. Ellis, his agent, attorneys and employees are hereby commanded to let the said Geo. C. Treat, into the immediate possession and enjoyment of an undivided one-tenth interest in and to all of said property, and to let the said Edmund Smith into the immediate possession and enjoyment of an undivided one-twentieth ( $1/20$ ) interest in and to all of said property, and to let the said Logan Archibald into the immediate [75] possession and enjoyment of an undivided one-twentieth ( $1/20$ ) interest in and to all of said property.

Fifth. That the plaintiffs do have judgment against said defendant in the sum of \$89.55 for their costs and disbursements incurred in this action; that said costs and disbursements shall be taxed by the clerk of this court and when so taxed shall be entered in this decree and thereupon that execution issue against said defendant for said costs and disbursements.

Done in open court this 16th day of October, 1915.

FRED M. BROWN,

Judge.



[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 16, 1915, Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page 365. [76]

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**[Order that Defendant Have Until February 15, 1916, to File Bill of Exceptions and Fixing Amount of Bond on Appeal.]**

*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**ORDER EXTENDING TIME TO FILE BILL OF  
EXCEPTIONS.**

Upon the application and motion of the attorney for defendant herein, and the attorneys for the plaintiffs herein being present and consenting thereto; and it appearing that the court stenographer has not been able to spare sufficient time for the completion of the record on appeal herein, and that he will be unable to complete said record by the 1st day of February, 1916;

And the attorneys for plaintiffs and the attorney for defendant having stipulated and agreed in open court that the Appeal Bond herein be fixed at \$1000.

and that such bond shall be and is sufficient in amount for all purposes pertaining to said appeal:

IT IS ORDERED that the defendant have until the 15th day of February, 1916, to file his bill of exceptions and record for appeal herein and settle the same, and that the appeal bond herein be fixed at \$1000.

Done in open court this 7th day of December, 1915.

FRED M. BROWN,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 8, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page 461. [77]

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**Order Extending Time to [February 25, 1916, to]  
File Bill of Exceptions.**

*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

Now on this day for good cause shown,—

IT IS ORDERED that the time to file and settle the Bill of Exceptions in this cause be and the same is hereby extended from the fifteenth to the twenty-

fifth day of February, 1916.

Dated this 15th day of February, 1916.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 15, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page 472. [78]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Stipulation as to Record, Abbreviating Exhibits, etc.**

It is hereby stipulated by counsel for the parties respectively in the above-entitled cause that the following may be substituted, or omitted from the record on appeal, to wit:

1. From the Transcript of the Evidence Plaintiffs' Exhibits "A," "B," "C," and "D" may be omitted, as the same form a part of plaintiff's complaint and are part of the record.

2. It is further agreed that in lieu of Defendant's Exhibit 10, consisting of files in Case #607, Ellis v. Gold Bluff Mining Company, the following statement of facts be substituted and that this statement

be incorporated in the Bill of Exceptions in lieu of said exhibit 10, to wit:

First. That said cause was regularly brought before the District Court for the Territory of Alaska, Third Division, on complaint filed February 22, 1913.

Second. That in said cause H. E. Ellis was the sole plaintiff and the Gold Bluff Mining Co. the sole defendant, and no appearance was made by any other person. The issues in the case at bar were in no way involved, directly or indirectly.

Third. That in the complaint in said cause No. 607 the plaintiff [79] therein, H. E. Ellis, alleged himself to be the lawful owner and entitled to the possession of the Mystic No. 1 and No. 2, Mystery No. 3 and Parallel No. 2 lode mining claims, which said claims are in controversy herein. Said Gold Bluff Mining Co. claimed part of the ground included in the above-named claims, and had applied for patent for same together with other land included in its claims. H. E. Ellis, for himself alone, had filed an adverse claim, and brought suit to determine right of possession.

Fourth. The final decree, entered in said cause November 17, 1913, declared said H. E. Ellis to be the owner and entitled to the possession of a part of the ground in dispute with the Gold Bluff Mining Co., describing the same by metes and bounds, and decreed the remainder of the disputed ground to the Gold Bluff Mining Co., each party relinquishing to the other the land decreed to the other. This decree was entered pursuant to stipulation of the parties.

3. It is further agreed that in lieu of Plaintiff's

Exhibit "H" the following statement of facts may be substituted and that this statement be incorporated in the bill of exceptions in lieu of said exhibit "H," to wit:

First. That said exhibit "H" was a mortgage given to secure the payment of \$200 drawn in the usual form, covering a lot and frame building situated in the town of Valdez, Alaska, owned by H. E. Ellis, which said mortgage was duly recorded Nov. 12, 1906.

Second. That in said mortgage Geo. C. Treat was named as mortgagee and H. E. Ellis as mortgagor.

DONOHUE & DIMOND and

LYONS & RITCHIE,

Attorneys for Plaintiffs and Appellees.

CHAS. G. GANTY,

Attorney for Defendant and Appellant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 15, 1916. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [80]

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### **Plaintiffs' Exhibits.**

Number.	Description.	Page.
A—Contract—May 15, 1907—between Ellis and Treat & Smith.....		3
B—Option Agreement—June 5, 1909—between Ellis, Treat & Smith and A. J. Crane....		21
C—Lease to Millard, July 23, 1909.....		24
D—Contract—July 9, 1908—between Ellis and Treat & Smith.....		11
E—Letter—April 12, 1912—Ellis, Treat & Smith to Cliff Co.....		33



Number.	Description.	Page.
F—Letter—Jany. 2, 1911—Ellis, Treat & Smith to Cliff Co.....		34
G—Statement—April 1, 1914—Cash paid out in re Gold Bluff suit.....		40
H—Mortgage—December 15, 1905—Ellis to Treat.....		81
I—Statement—April 1, 1914 (Duplicate of G).		93
J—Letter—Dec. 4, 1914, to Ellis at Denver from Treat & reply.....		99
K—Statement—Treat in acct. with Cliff Co.....		113

### **Defendant's Case. (Exhibits.)**

1)–		
2)–Four copies of Articles of Incorporation of		
3)– the Mystic Gold Mining Company.....		51
4)–		
5)–Three copies of Proposition of Ellis, dated		
6)– July 21, '08, to Mystic Gold Mng. Co. re-		
7)– garding incorporation.....		54
8—Letter—Dec. 12, 1911—Ellis, Treat & Smith to Cliff Co.....		61
9—Letter—June 5, 1909—Treat & Smith to Ellis.....		162
10—Files in Case #607—Ellis vs. Gold Bluff Mng. Co.....		173
11—Letter—July 22, 1914—H. E. Ellis, by W. M. Ellis, to Cliff Co.....		232
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*In the District Court for the Territory of Alaska,\*  
Third Division.*

No. 721.

GEORGE C. TREAT, EDMUND SMITH and  
LOGAN ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Transcript of Evidence.**

BE IT REMEMBERED, that the above-entitled  
cause came on duly and regularly to be heard, on

Tuesday, October 5, 1915, at ten o'clock A. M., before the Honorable FREDERICK M. BROWN, Judge of said Court:

The plaintiffs herein being represented by their attorneys and counsel, Messrs. Donohoe & Dimond and Messrs. Lyons & Ritchie.

The defendant herein being represented by his attorney and counsel Charles G. Ganty, Esq.

Opening statement having been made to the Court by Mr. Donohoe on behalf of the plaintiffs and by Mr. Ganty on behalf of the defendant, the following additional proceedings were had and done, to wit: [83\*—1†]

**[Testimony of Edmund Smith, on His Own Behalf.]**

EDMUND SMITH, one of the plaintiffs, being first duly sworn, testified in his own behalf, as follows:

Direct Examination by Mr. Donohoe.

Q. You are one of the plaintiffs in this case?

A. Yes, sir.

Q. Where did you reside from the year 1907 until 1912, or thereabouts? A. In Valdez, Alaska.

Q. You are acquainted, of course, with your co-plaintiffs Treat and Archibald? A. I am.

Q. And you are acquainted with the defendant Ellis? A. I am.

Q. You are also acquainted with the property described in the first paragraph of the complaint?

A. I am.

Q. When did you first have any negotiations con-

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\*Page-number appearing at foot of page of original certified Record.

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(Testimony of Edmund Smith.)

cerning this property with the defendant Ellis?

A. Well, it was a short time prior to the date of the exhibit, in 1907, when the \$500 was advanced to Mr. Ellis.

Q. That exhibit was dated May 15, 1907—that was about the time you first had negotiations with Mr. Ellis?

A. About that time,—it may have been a week or two weeks prior to that time, but it was only a very short time before the execution of the exhibit, I think only a few days.

Q. I hand you a paper, dated May 15, 1907, and ask you if that is the contract that you refer to? (Handing witness paper.)

A. That is the contract.

Q. Now, shortly before the execution of that contract were your [84—2] first negotiations with Ellis? A. The first negotiations I ever had.

Mr. DONOHOE.—We offer this in evidence and ask that it be marked Plaintiffs' Exhibit "A." It is the original of the exhibit "A" in the complaint.

Mr. GANTY.—We admit that as being a copy of the contract.

(The contract is admitted in evidence, without objection, marked Plaintiffs' "A" and reads as follows:

**Plaintiffs' Exhibit "A."**

(This exhibit is omitted from transcript by stipulation, as being identical with Plaintiffs' Exhibit "A" attached to plaintiffs' complaint, and a part of this record.) [85—3]

(Testimony of Edmund Smith.)

Q. Mr. Smith, were all the arrangements you had with Mr. Ellis in regard to the property in controversy here up to July 15, 1907, embodied in Plaintiffs' Exhibit "A," just introduced in evidence?

A. All up to May 15th—I think that is the date of the instrument—up to May 15th, was all embodied in that contract.

Q. It is embodied in this exhibit?

A. Except I examined some ore with Mr. Treat that Ellis had on exhibition in his home here.

Q. Where did you examine that ore?

A. At Ellis' residence in Valdez.

Q. Just state the circumstances which brought about the execution of this contract of May 15, 1907.

A. Mr. Treat came to my office about that date, a few days prior or possibly the day before, and said that Mr. Ellis wanted to get some money, five hundred dollars, and designated the terms, as I remember it practically as set forth in the contract, and that Mr. Ellis had some ore which we could examine, that came from the property in question, and Ellis afterwards came with Treat to my office. I told Treat if he thought it was all right I would go in with him, and later Ellis and Treat came to my office and we went over to Ellis' residence and there was I would say fifty or a hundred pounds of ore that he said came [86—4] from this property and we examined it, just casually. I don't know at whose request it was we went over to Ellis' residence, but we all went over together and examined the ore.

Q. Did Mr. Ellis at that time make any statement



(Testimony of Edmund Smith.)

as to the amount of development work that had been done on the property?

A. Well, he said that very little development work had been done, and he had brought this ore out, probably fifty or one hundred pounds, possibly two hundred pounds—there was a little bunch of ore on the floor.

Q. Did he state whether there was any other ore mined or on the dump?

A. No, there was not. The purpose of this money was to get out five tons of ore for shipment,—the purpose of this advancement.

Q. Now, upon the execution of this contract of May 15, 1907, did you and Mr. Treat advance to Mr. Ellis the money mentioned in the contract?

A. We did.

Q. And what was done with that money in relation to the property?

A. Well, part of it I imagine was used, and possibly all of it, in getting out this ore. A tunnel was started seventy feet above the original work. The work done prior to that time was of a very—well, very little work; either a tunnel or shaft—I don't think it was over two or three feet, in extent, in depth or into the bank—had been started and it appeared that that was below the high tide line and this money that we put in, as represented to us by Mr. Ellis, he used in driving a tunnel seventy feet above, on the ledge, and getting out some ore.

Q. About how many tons of ore were taken out with this \$500?

(Testimony of Edmund Smith.)

A. There was more ore taken out than was shipped, to the best of my recollection it was either 8,200 or 8,400 pounds of ore that [87—5] was brought out and shipped, but that was selected from probably twice that amount—the best ore that was encountered in this tunnel was selected and shipped.

Q. That ore was sacked?

A. That ore was sacked, yes, sir.

Q. And brought to the dock at Valdez?

A. Yes, sir.

Q. What became of that ore?

A. That ore was shipped to the Selby Smelter, near San Francisco.

Q. The shipment was made by you?

A. The shipment was made by me personally.

Q. Do you remember how long it was after the contract made on the 15th when this shipment was made, about how long?

A. No, I do not. I should say a month or six weeks, probably less time—it was only a short time afterwards.

Q. Did you in the due course of time receive the returns from the Selby Smelter of this ore?

A. I did.

Q. What were the net returns of this ore after paying wharfage at Valdez, transportation to Seattle, transportation to the Selby Smelter and the Selby Smelter's charges for the treatment of the ore?

A. Well, I can't say to a cent; the total value of the ore shipped was \$106 as I remember it. Out of that was the \$20 I had paid for freight to Seattle,

(Testimony of Edmund Smith.)

which was in addition to the \$500 and wharfage, whatever that was, here, wharfage in Seattle and freight from Seattle to Frisco and the transfer and freight from Frisco to the Selby Smelter and the smelter charges—the balance was remitted.

Q. What balance, do you remember, was left after paying those charges [88—6] from the returns of this ore?

A. To the best of my recollection it was in the thirties—my recollection is that it was thirty-six dollars and some cents.

Q. Thirty-six dollars left?      A. Yes, sir.

Q. That was the net profit on the ore after it came into your hands on the dock at Valdez?

A. Yes, sir.

Q. Now, did you receive from the Selby Smelter a written statement of their smelter returns?

A. I did.

Q. Did you exhibit those smelter returns to Mr. Ellis?      A. I did.

Q. Can you state about when and where you exhibited it?

A. It was immediately after I received it; I can't give the date, but it was returned to me in due course after the ore reached Frisco, within probably two weeks—it might have been a little longer—and I submitted it to both Mr. Treat and Mr. Ellis immediately after its receipt by me.

Q. Where did you submit that to these gentlemen?

A. In my office.

Q. Do you remember any comments made by Mr.

(Testimony of Edmund Smith.)

Ellis or in his presence at that time regarding the ore?     A. Yes.

Q. Just state what those conversations were or the substance of them.

A. I can't give the exact words, but it was a surprise to all of us that the smelter had failed to remit to the extent of \$100 per ton at least on the ore. It was all selected ore and from the later returns, I was confirmed in that opinion and Mr. Ellis [89—7] was of the same opinion as Mr. Treat and myself in that regard.

Q. Was anything said at that meeting about getting out any more ore to ship from this Mystic mining claim?     A. Yes, there was.

Q. State what it was.

A. The substance of it was that on such returns as that it would not pay to ship any more ore, there was too much leakage, too much loss.

Q. Now, between the time you received the returns of this ore that was shipped to the Selby Smelter and the 9th day of July, 1908, did you and plaintiff Treat and defendant Ellis have any other conversations in regard to this property which you can now recollect?

A. Yes, we had numerous conversations about the property and what could be done with it,—in fact, every week or so I would meet Mr. Ellis on the street or he would be at the office and we would discuss the property.

Q. What became of that written smelter returns you received from the Selby smelter?

(Testimony of Edmund Smith.)

A. I left them in the office, in my office in Valdez, with all other matters that I did not think were important enough to take with me when I removed to Seattle.

Q. In order to have the record clear on that, state what you mean by your office in Valdez and how you came to leave it there?

A. My office in Valdez was opposite the Steamship office, fronting on the frontage to the dock, the Valdez Dock Company; the office was occupied by Mr. Bunnell and myself. When I left I sold my interest in the building to Mr. Bunnell and he remained in the office and all of the papers and records that I had in the office that were not entirely personal or did not relate to matters that might come up on the outside, I left in the office with [90—8] Mr. Bunnell.

Q. And that was the last you have seen of it?

A. That was the last I have seen of it.

Q. And in regard to your office, you were practicing law in the office you speak of?     A. Yes, sir.

Q. Up to about 1912?     A. May 15, 1912.

Q. And then on that date you went to Seattle where you are still practicing law?     A. Yes, sir.

Q. And the office you speak of and the papers you left with Mr. Bunnell were destroyed by fire last July, were they?

A. From the indications of the ground and what I heard it was and it certainly shows the effects of it.

Q. Now what was the reason that this \$36 profit on this ore was not distributed at the time you re-



(Testimony of Edmund Smith.)

ceived the returns on the ore shipped, if it was not distributed?

A. The reason it was not distributed was, the Alaska Steamship Company, but whom it was shipped to Seattle, came in with an additional freight bill on account of the value we placed on the ore and on account of the rate, the four dollars per ton rate, they gave us applying only to one hundred ton lots, they advanced that to ten dollars as I recollect and we valued the ore as I recall it at \$500 a ton, and they added a proportionate charge for all values above \$50 a ton and they presented a bill, as I recall now, for \$96 additional freight.

Q. In addition to what you had already paid?

A. Yes, in addition to what we had already paid.

Q. That claim of the Steamship Company against you remained unadjusted [91—9] until the time of the contract of July, 1908?

A. I don't know whether up to that time or not, but for a long period of time after the shipment and after the returns, I can't give the date, when it was finally abandoned.

Q. Was Mr. Ellis apprised of this additional claim of the Steamship Company? A. He was.

Q. Did he at any time demand the distribution of this small profit on this shipment of ore?

A. Never.

Q. Now, what was the occasion, or what circumstances brought about the execution of the contract of the 9th day of July, 1908, set out in the fifth paragraph of your complaint?

(Testimony of Edmund Smith.)

A. Well, from the time we received the returns, the smelter returns, we were satisfied that it was not profitable to ship to a smelter and we at intervals discussed other ways and means of operating the property and getting our money out of it and Mr. Ellis wanted, of course, to improve and develop the property and we were anxious to get our money, so various methods were suggested which finally resulted in the drawing of the contract of 1908.

Q. At whose suggestion or solicitation was this contract of July 9, 1908, entered into?

A. I can't say as to the solicitation, who solicited it, but it was simply agreed upon, out of the various matters that had been suggested by Mr. Ellis, by Mr. Treat and myself. The exact details of that, I can't say who suggested it.

Q. Now, I understand you to say that you and Ellis and Treat had various conversations and discussions regarding this property previous to the entering into of the contract of July 9, 1908? [92—10]

A. Yes, sir; and various methods were suggested and finally by our combined efforts and suggestions, that contract was evolved out of it, but who suggested the details of that I can't say.

Q. That is what the three of you finally agreed upon?

A. That is what we finally agreed to reduce to writing.

Q. I submit to you a contract dated July 9, 1908, between yourself and Treat on one part and Ellis on

(Testimony of Edmund Smith.)

the other, and ask you if that is the original of the contract?

A. That is the original of the contract, that is, it is one of the originals. All papers that were prepared in this matter were made, so far as it pertained to the three of us, in triplicate; Ellis got a copy, Treat a copy and I took one.

Q. And they were all executed as originals?

A. They were all executed as originals.

Mr. DONOHUE.—We offer this in evidence and ask that it be marked Plaintiffs' Exhibit "D" to keep it from conflicting with exhibits in the complaint.

(Admitted without objection, marked Plaintiffs' Exhibit "D" and reads as follows:)

**Plaintiffs' Exhibit "D."**

(Copy of this exhibit is omitted from transcript by stipulation, as being identical with copy of contract set forth in Plaintiffs' complaint, paragraph V, and a part of this record.)

Q. Now, at the time of the execution of this contract, marked Plaintiffs' Exhibit "D," what was due and owing to yourself and Mr. Treat jointly from Mr. Ellis in relation to these mining matters?

A. There was the five hundred dollars advanced and the interest on it,—whatever the interest would be, less the small credit from the shipment of the ore and another item—no, that is all; that is all that was due to us jointly.

Q. Did you have personal knowledge from conversations had between [93—11—12] Mr. Ellis

(Testimony of Edmund Smith.)

and yourself and Mr. Treat whether Mr. Ellis at that time was indebted to Mr. Treat in any amount?

A. That was discussed in my presence at the time this contract was drawn; the amount was considerably over—between two and three hundred, \$26, as I remember it, and I gave Mr. Treat my check for half of that amount.

Q. Upon the execution of that contract?

A. Yes, upon the execution of that contract.

Q. Of July 9, 1908?      A. Yes, sir.

Q. What was done at the time of the execution of this contract of July 9, 1908, in reference to giving Mr. Ellis any other receipt than this contract for his indebtedness?

A. So far as I know, no other receipts were given. I regarded the contract as a receipt itself—it acknowledged the receipt.

Q. And did Mr. Ellis at that time or any time thereafter demand of you a receipt?

A. Never of me, never demanded anything in addition to that contract.

Q. You say this contract, Plaintiffs' Exhibit "D," was made in triplicate and each of them executed as originals, and one given to each of you three parties?

A. All contracts pertaining to this matter, including this one, were made in that way.

Q. After the execution of this contract, Plaintiffs' Exhibit "D," what was done by you and Mr. Treat, or the three of you, you and Treat and Ellis, in regard to carrying out the terms of this contract?

A. Well, I prepared the Articles of Incorporation

(Testimony of Edmund Smith.)

of the Mystic Gold Mining Company and all other papers that I thought were necessary at that time, including a proposition from Mr. Ellis [94—13] addressed to the Mystic Gold Mining Company, which embodied the agreement of 1908 as to deeding the property to the corporation and accepting stock and the distribution of the stock.

Q. That proposition was, the stock was to be distributed in accordance with the terms of the contract of July 9, 1908?

A. Yes, all of these papers were executed; the articles of incorporation were executed and signed and acknowledged by Mr. Treat, Mr. Ellis and myself, except the proposition which was signed by Mr. Ellis.

Q. Were those articles of incorporation ever filed?

A. They were not.

Q. Why? And why did you take no further steps in the completion of the organization of the corporation?

A. Well, the main reason was to prevent tying up the property in case some other disposition should be deemed more advantageous later on, and another reason was the financial condition of the town. It was the next summer after the Rëynolds difficulty here and the town was in bad shape financially. The other acts we did to try to get other parties to take up this treasury stock in a block, Mr. Hubbard—

Mr. DONOHUE.—Never mind that just now.

Q. After the papers for this Mystic Gold Mining Company were drawn up and properly executed, I



(Testimony of Edmund Smith.)

understand you to say you did not file them because of the difficulty you would probably meet with in selling the treasury stock provided for?

A. That is the reason.

Q. And you did not want the property tied up in a corporation when you might want otherwise to dispose of it?

A. That is the reason it was not carried out and deeded over?

Q. Now, how long would you say, what is your best recollection of [95—14] the time that elapsed between the execution of the contract of July 9, 1908, and the execution of these articles of incorporation.

A. It was a few days, it was immediately after the contract.

Q. Would you say within thirty or forty days?

A. Yes, sir, within that time easily.

Q. What efforts did you and Mr. Treat make to procure purchasers for this 20% of the treasury stock of the Mystic Gold Mining Company?

A. Well, we took the matter up with everybody that we thought might be able to handle it. The first person that became interested or intimated he could handle it was Mr. Charles Hubbard.

Q. Just state who Mr. Charles Hubbard was at that time and what his mining connections were?

A. Well, he was one of the incorporators and owners of the Hubbard-Elliott Mining & Development Company; he was a man interested in mining and was interested in the flotation of properties, secur-

(Testimony of Edmund Smith.)

ing capital, etc. He told us he could get the money to take up the treasury stock and went outside for that purpose, but failed to do it.

Q. He failed? A. Yes, sir.

Q. Who next did you have any conversation or negotiations with in order to see if you could sell this treasury stock?

A. We had negotiations with a Mr. Mills who resided here. In company with Mr. Ellis, Mr. Treat and myself took Mr. Mills down to the ground; Treat and I hired a boat and took him down to examine the property; that was shortly after Mr. Hubbard had failed.

Q. Were you able to accomplish anything with Mr. Mills?

A. No, Mr. Mills wanted a lease on the property and we wouldn't [96—15] give it, he was either unable to or at any rate he didn't buy the treasury stock.

Q. Do you remember a conversation which took place on the property at the time you and Mr. Treat and Mr. Ellis took Mr. Mills down there in regard to the ownership of this property and any statements made by Mr. Ellis at that time?

A. Well, I think you refer to the conversation between a party they call Gus here, I don't know what his last name is, the owner of the boat—I remember the conversation and think I can repeat it.

Q. Just state that conversation, as near as you can remember it?

A. At that time it was very difficult to get around

(Testimony of Edmund Smith.)

the tunnel, the mouth of the tunnel where the work was done and going around the edge of this bluff, we all started up the hill, a very narrow place; we got to a narrow point and Ellis stopped and turned around to Gus and he says—

Q. Gus was the boatman that took you down?

A. Gus was the boatman that took us down there, the man that owned the boat, the man we hired to take us down. He said, "Where are you going or what are you doing up here?" and I think I answered and said, "Why, isn't it all right for him to go up with us to the mine?" He says, "No, it is not, but," he says, "you and Treat, if you say so, it is all right, but as far as I am concerned a man has got just as much right to come into my house without my invitation as he has to go into my mining property," and Gus turned around and went back. He said, "You and Treat are interested with me in the property and if you say it is all right, it will go, but it isn't my idea about those things."

Q. Now, this corporation provided for in the contract of July 9, 1908, was never actually completed?  
[97—16]

A. No, it never was filed, never was recorded.

Q. Who next after Mr. Mills did you and Mr. Treat endeavor to interest in this property?

A. Mr. Treat brought a Mr. Crane, A. J. Crane, into my office.

Q. Do you remember about what time that was?

A. I can fix the date—it was a few days, possibly a week, prior to the execution of the option to Mr.

(Testimony of Edmund Smith.)

Crane of a lease on the property.

Q. The option is dated the 5th day of June, 1909?

A. It was a few days prior to that, it may have been a week—I don't think it was longer than a week.

Q. What negotiations did you have with Mr. Crane with reference to the property?

A. Well, we first tried to get Crane, who represented that he had a stamp mill that had been purchased for some other property which was not what it was represented to be; he owned a stamp mill and they had money in their treasury. We tried to get Crane to take all this treasury stock and turn in the mill at its value and pay him the balance in cash, and Mr. Crane said he would like to see the property and we arranged it and took him down to the property in company with Mr. Ellis; I didn't go to the property; Treat and Ellis and Crane and I think somebody else went down.

Q. After Mr. Crane returned from examining the property, did you have any further negotiations with him?

A. Yes, considerable, until it resulted in the giving of the option for the lease.

Q. What time of the day was this option executed?

A. It was in the evening; I remember that Mr. Crane and Mr. Ellis had a meeting at seven o'clock in the evening. The boat was [98—17] going out that night and it was after that interview that Ellis came down to the office and he and Mr. Treat and I had some conversation over the matter and I sent out and got a stenographer and it was finished

(Testimony of Edmund Smith.)

that night, as Mr. Crane was going out on the boat that evening.

Q. He was going out to the States?

A. He was going out to the States that night.

Q. Did he go out that night?      A. He did.

Q. Some time during the night?

A. Yes, sir—I don't recall just what time the boat sailed.

Q. Now, what negotiations did you and Mr. Treat on the one side and Mr. Ellis on the other have in your office in the town of Valdez on the evening of the 5th day of June, 1909, and shortly previous to the execution of the contract of that date?

A. Mr. Ellis came into the office from his meeting with Crane and says, "What interest do you expect in this property if we carry out this lease." I told him we expected 20% as provided for in the contract, and Mr. Ellis says, "Well, this will save you some work and some expense."

Q. You spoke of the contract; which contract have you reference to?

A. I refer to the contract of July 9, 1908, and we claimed 20% interest in the property. Mr. Ellis, as I stated, said that this would involve less work on our part. We answered by stating that that was true, but it would give him a greater interest in the property, because he would only have 60% if the contract of 1908 was carried out, while under this contract he would have 80%, and he stated then that he wanted to know if we would take our money back with good interest. I told him we would not, that



(Testimony of Edmund Smith.)

we had gone into the matter in the nature of a grub-stake proposition; [99—18] that there was nothing there at the time we put the \$500 into it; that our money had performed all of the work that had been done on it since that time and we certainly wouldn't take a chance of that kind and then just accept our money back. He then stated that his main reason for requesting something of that kind was that he had all of his life had an ambition, since he reached his maturity, to discover, develop, own and operate a mine of his own, and for that reason it was a matter of sentiment with him on the property.

Q. What proposition, if any, did you and Treat finally make to Mr. Ellis at that time in regard to the property in controversy?

A. Well, we were very anxious to get this property developed and something done with it, and Mr. Treat and I retired to another room in the office, and after discussing the matter personally we went back and stated to Mr. Ellis what we would do.

Q. State what that proposition was and what reply Mr. Ellis made to it.

A. That we would insist upon our ownership of 20% interest in the property, but during the life of the lease we would accept 15% of the royalty, or allow Mr. Ellis to take 5% of our royalty for the purpose of compromising and securing the lease and the development of the property.

Q. What reply did Mr. Ellis make to that?

A. He said that was all right. I sent out then for a stenographer.

(Testimony of Edmund Smith.)

Q. In speaking of the lease, you mean the lease then in contemplation with Crane?

A. Yes—this was an option for a lease first; we gave him an option for a lease which was afterwards merged into a lease. I sent out for a stenographer; the papers were prepared and all parties came in and signed it. [100—19]

Q. Who was present at the conversation you have related, where you and Treat made the proposition to Ellis?

A. Just Ellis, Treat and myself.

Q. That conversation took place in your office?

A. That conversation took place in my office in Valdez, Alaska.

Q. About what time?

A. It was after our evening meal; it was along after seven o'clock in the evening; we came back to the office for that purpose, to try to close the matter up.

Q. Now, later you prepared a contract in regard to the option?

A. We prepared an option contract which was signed up that evening and delivered—a copy of it delivered to Mr. Crane and we each took a copy.

Q. This contract, I understand there were four copies of it made, and all executed as originals?

A. All executed as originals.

Q. I hand you a contract entitled, Memorandum of Option Agreement, dated the 5th day of June, 1909, between H. E. Ellis, George C. Treat and Edmund Smith, parties of the first part and A. J. Crane, party of the second part, and ask you if

(Testimony of Edmund Smith.)

this is the contract which you have just testified to as having been executed at that time.

A. That is the contract—it is one of the originals. Ellis at that time was furnished a duplicate of this, which was also executed as an original; so was Mr. Treat and Mr. Crane.

By the COURT.—The Crane contract of June 5, 1909—is that the one on which the subsequent lease was based for six years?

Mr. DONOHOE.—Yes, sir.

By the COURT.—This is the lease that finally went through?

Mr. DONOHOE.—Yes, sir. [101—20]

Mr. RITCHIE.—The Millard lease was practically the same as the Crane lease.

Mr. DONOHOE.—I ask that this Memorandum of Option Agreement be marked Plaintiffs' Exhibit "B," and be admitted in evidence.

It is so marked and admitted. ,

Q. I call your attention to the endorsement on the back of Plaintiffs' Exhibit "B" and ask you to state if you know what that is.

A. Well, the first purports to be an assignment of all rights under this option to Mr. H. W. Judson, signed by Mr. A. J. Crane. The second endorsement is what purports to be an assignment by H. W. Judson to B. F. Millard, witnessed by C. T. Arkins.

Mr. DONOHOE.—You do not question the assignment?

Mr. GANTY.—We do not question the assignment.

The exhibit "B" and endorsements read as follows:

(Testimony of Edmund Smith.)

**Plaintiffs' Exhibit "B."**

(This exhibit is omitted from transcript by stipulation, as being identical with Plaintiffs' Exhibit "B" attached to plaintiffs' complaint, and a part of this record.)

Q. Was there any discussion at the time of the execution of Plaintiffs' Exhibit "B", which was on the 5th day of June, 1909, regarding the respective ownerships in this property, other than you have testified to?

A. No, nothing that I recall. Of course, there was probably more words used than I have used,—I can't remember each word that was said, but that was the final proposition that was made and accepted.

Q. That proposition was that you and Treat were to retain a 20% interest in the property but that during the life of this lease you would accept 15% of the royalty?

A. Yes, we simply gave up 5% of our interest in the royalty to prevent a lapse or falling down on the proposition. The man seemed to have money or represent money and it seemed to be an opening to develop the property.

Q. You mean by the falling down on the proposition, the proposition [102—21—23] between Crane on the one side and you and Ellis and Treat on the other?

A. Yes; we simply gave up part of our interest in the royalty rather than have the matter fall down.

Q. Now, on the 23d day of July, 1909, did you, Mr. Treat and Mr. Ellis have any further negotiations

(Testimony of Edmund Smith.)

or transactions in relation to this mining property?

A. Isn't that the date of the lease?

Q. That is the date of the Millard lease.

A. Yes, sir; we had some conversation in regard to it.

Q. State any conversation that you can now recall between yourself, Treat and Ellis previous to the execution of what is termed the Millard lease?

A. When Mr. Millard came in with these assignments and requested the lease, I prepared a lease, after discussing some forms of it and some points to be inserted in the lease with Mr. Ellis and Mr. Treat; I prepared this lease and when it was ready, sent for a stenographer and had four copies of it made. The parties were sent for or came in according to previous arrangement—there was Mr. Millard, Mr. Ellis, Mr. Treat and myself; I gave each of them a copy of the lease.

Q. This was the lease that was executed at that time? (Handing witness paper.)

A. That is the lease.

Mr. GANTY.—We admit the lease to Millard.

The lease is marked Plaintiffs' Exhibit "C" and admitted without objection. It reads as follows:

**Plaintiffs' Exhibit "C."**

(This exhibit omitted from transcript by stipulation, as being identical with Plaintiffs' Exhibit "C" attached to plaintiffs' complaint, and a part of this record.) [103—24—28]

Q. Now, proceed, Mr. Smith, and tell what conversations, if any, took place at the time of the execu-



(Testimony of Edmund Smith.)

tion of Plaintiffs' Exhibit "C."

A. Well, there wasn't very much said in regard to the matter,—each one read the copy which they had; Ellis said that looked all right to him, Millard said it looked all right to him and we stepped around and signed the contract and acknowledged it—signed the lease.

Q. Who was present at that time?

A. There was B. F. Millard, H. E. Ellis, George C. Treat and myself.

Q. You were all parties to this lease?

A. We are all parties to this lease, yes.

Q. I call your attention to the introductory clause of this lease:

“This Indenture, made this 23d day of July, A. D. 1909, between H. E. Ellis, four-fifths owner, George C. Treat and Edmund Smith, each owning ten per cent, all of Valdez, Alaska, parties of the first part and lessors, and B. F. Millard, Trustee, of Valdez, Alaska, party of the second part and lessee, Witnesseth—

Was there any discussion at that time or any criticism made by Mr. Ellis of the portion of this lease which sets out the respective amounts in which the lessors owned this property?

A. Not a word of criticism, either at that time or at any other time; that was drawn in strict accordance with our agreement at the time the option was given.

Q. You mean the option of the 5th day of June?

A. Yes, sir, the option to Crane, the option on

(Testimony of Edmund Smith.)

which the lease is based. And it was put in that way because the royalty was for a different amount, as I explained a moment ago.

Q. Now, you have named all persons who were present as you can recollect when that lease, exhibit "C," was signed?

A. Probaby Mr. Bunnell and Mrs. Lockhart or whoever was employed by us at that time—Mrs. Lockhart I see took the acknowledgment—those people were in the building, were in our office but in my room the only people I can recall were the four mentioned.

Q. And you delivered to Mr. Ellis a copy of this lease and he read [104—29—30] it before he signed it?

A. Read it before he signed it; so did Mr. Millard and Mr. Treat.

Q. And no objections were made whatever to it at that time?

A. None whatever, it was signed and each of them expressed himself that it was all right.

Q. And expressed themselves that they were satisfied, in some way?

A. Just the language they used; I think they said, it looked all right to them and they stepped around and signed it in rotation.

Q. Has Mr. Ellis at any time since the execution of Plaintiffs' Exhibit "C," objected to you in your presence to that portion of the lease which I read and which defined the proportionate ownership of the lessors in the property?

(Testimony of Edmund Smith.)

A. Never, at any time and we paid our portion of permanent improvements on that basis.

Q. Now, you know that shortly after the execution of this lease to Millard that he assigned it to the Cliff Mining Company, do you not?     A. Yes, sir.

Q. Do you remember on or about what date that was?

A. No, I do not; I believe it was immediately after that, as soon as the Cliff was organized; it was part of the same transaction.

Q. And what did the Cliff Mining Company do in regard to the property after they took the assignment of the Millard lease?

A. They put a crew of men on the mine, developing the mine, excavating a place for the mill and the installation of the mill—the general development of the property.

Q. Now, up to the point where the Cliff Mining Company took charge of it, on or about the fourth day of August, 1909, how much real development work had been done on the property?

A. Well, within a foot or two, I would say there was 20 ft. of tunnel.

Q. Twenty feet of tunnel all told?

A. Twenty feet of tunnel all told.

Q. And where was that work done, if you know?

[105—30]

A. I can't describe its relation to the corners of the property, the claim it stood on—

Q. In relation to tide water?

A. It was about 70 feet, I judge it was about that.

(Testimony of Edmund Smith.)

distance and I have been informed by Mr. Ellis that it was 70 ft. above the mean high tide line.

Q. Do you know when the Cliff Mining Company surrendered the property back?

A. Only from hearsay—some time in August, 1914.

Q. Now, of your own knowledge, what machinery, tools and equipment do you know of the Cliff Mining Company installing on the property?

A. Well, there were two hoists and a stamp mill, two units, a Nissen mill and tools; there was a wharf, bunkhouse and quite a number of small buildings, blacksmith-shop and other buildings that were erected by the Cliff Mining Company.

Q. What was the financial result of the Cliff Mining Company's operations of the property during the time they held possession of it under this lease?

A. It was successful financially.

Q. And the lessors named in the lease received dividends, did they, in accordance with the terms of the lease?

A. I wouldn't say—we don't think we did; we have had several disputes with the company, but we received what royalties they paid us.

Q. Well, from time to time there were little differences as to the interpretation of the lease?

A. Yes, just what should be charged to us; we objected to being charged with the machinery and permanent improvements to the property?

Q. And these matters were taken up and adjusted from time to time?

A. They were not really adjusted—we finally

(Testimony of Edmund Smith.)

dropped the matter, entirely—didn't want to have any litigation over it.

Q. Have you any definite knowledge as to the value of the tools, machinery and equipment left upon the property when the Cliff Mining Company surrendered their possession? [106—31]

A. No, I have not, except knowledge as attorney for the Cliff Mining Company at the time the mill was burned as to the costs of the installation of the new mill and other improvements.

Q. What was the cost of installing the new mill?

A. I was informed it was about \$40,000.

Q. And that was in what year?

A. I believe it was in 1910—there is a contract, however, where we agreed that they might ship to the smelter until the mill was constructed—it gives the date.

Q. For the purpose of refreshing your memory—this contract was dated the 14th day of August, 1911?

A. It was in 1911.

Q. Is that about the time the mill was constructed?

A. That is the time they commenced the construction of the mill—they excavated and a great deal of expense was put into the foundation.

Q. Now, Mr. Smith, did Mr. Ellis at any time since the execution of the contract of July 9, 1908, until the Cliff Mining Company surrendered back the possession of this property ever dispute the right of you and Mr. Treat to a 20% interest in the property?

A. Never to me and I never heard of it.



(Testimony of Edmund Smith.)

Q. Did you and Mr. Treat and Mr. Ellis as owners of this property during the time that the Cliff Mining Company operated it, ever make any written protests to the Cliff Mining Company in regard to their removing the machinery from the property?

A. We did, in regard to the hoist; it was general, but what started it, they were attempting to sell a small hoist which had become inadequate on account of the depth of the mine, and installing a larger one. I went to Mr. Ellis and went to Mr. Treat and stated in accordance with the lease that that should remain on the property, that belonged to the owners of the property and we served a protest against selling any of the property or tools that had been placed on the ground during the lease. [107—32]

Q. Did Mr. Ellis sign this protest with you and Mr. Treat?     A. Yes, sir.

Q. I hand you an instrument dated Valdez, Alaska, April 12, 1912, directed to the Cliff Mining Company, signed H. E. Ellis, George C. Treat and Edmund Smith and ask you if that is the protest that was served upon the Cliff Mining Company in that connection?

A. That's it; that is Ellis' signature, Mr. Treat's and my own.

Mr. DONOHUE.—We offer this in evidence.

It is admitted in evidence, without objection, marked Plaintiffs' Exhibit "E" and reads as follows:

**Plaintiffs' Exhibit "E" [Letter, April 12, 1912, H. E. Ellis et al. to Cliff Mining Co.].**

"Valdez, Alaska, April 12, 1912.

To the Cliff Mining Company,

Gentlemen:

Under the lease held by your company of the mining property known as the Cliff Mine, there is the following provision:

'It is further understood and agreed that all machinery, tools, equipment and improvements placed upon said mining claims by the lessee, his successors or assigns, shall, at the termination of this lease, be left upon the property and become the sole property of the lessors, as part of the consideration hereof, and of said lease.'

Under this provision the owners of the property insist that all machinery, tools, equipments and improvements placed upon the said property during the life of the lease, become the property of the owners as soon as the same is placed upon the property, subject to the right of the use of the same by the Cliff Mining Company, the present owners of the lease. And in case any machinery is changed, or this machinery substituted, the machinery no longer in use by the lessee, should be stored in a proper place, or delivered to the owners of the said property, and that the Cliff Mining Company had no right or authority to sell or dispose of any machinery, tools, equipment or improvements which have

(Testimony of Edmund Smith.)

been placed upon the said property.

Very truly yours,

H. E. ELLIS.

GEO. C. TREAT.

EDMUND SMITH."

Q. Now, Mr. Smith, assuming that the 'Cliff Mining Company had sold this hoist to which you are testifying, would that have increased the royalty that would have been paid on the lease?

A. It would have increased the royalties, but it would decrease the value of the property when it was turned back to the owners; we would have got 25% of its value and as owners of the property we contended that we were entitled to all of it. [108—33]

Q. Then if yourself and Mr. Treat were only interested in the royalty and had no interest in the property itself, would it have been to your advantage to have the hoist sold or retained?

A. Sold, certainly.

Q. I hand you an instrument addressed to the Cliff Mining Company dated Valdez, January 2, 1911, and ask you if that is another protest served by yourself, Ellis and Treat as owners upon the 'Cliff Mining Company? (Handing witness paper.)

A. Yes, that is one of the several notices.

Q. Is that Ellis' signature?

A. That is Ellis' signature, Treat's signature and my own signature.

The paper is offered in evidence, marked Plaintiffs' Exhibit "F" and admitted without objection. It reads as follows:

(Testimony of Edmond Smith.)

**Plaintiffs' Exhibit "F" [Letter, January 2, 1911,  
H. E. Ellis et al. to Cliff Mining Co.].**

"Cliff Mining Company,  
City.

Gentlemen:

In addition to items mentioned in former statements, we, the undersigned, owners and lessors of the Cliff Mining Ground and claims, object to any tools such as picks, shovels and steel being charged against the owners except such as may have been purchased to replace those broken or worn; the latter may come under the head of repairs. We also object to any part of wharf being charged against us as owners or lessors, or deducted in whole or in part from the rents or royalties. We contend that the only articles which are chargeable against the gross output are—

'Superintendent, miners, mill men and other labor necessarily and economically employed, explosives and repairing.'

Very truly yours,

H. E. ELLIS,  
EDMUND SMITH,  
GEO. C. TREAT."

Valdez, Alaska, January 2, 1911.

Q. How came this protest to be made, if you can recall it at this time—exhibit "F"?

A. Well, it was in regard to charging to the owners and deducting from the royalty the improvements placed upon the property. We contended that the only thing that should be deducted from the royalty

(Testimony of Edmund Smith.)

was the pay-roll, Superintendent, etc., as provided in the lease. The Cliff Mining Company claimed that they had a right to deduct all improvements, machinery, tools, etc., from the owners and [109—34] we served several notices upon them in regard to the management of the property and the charges made against the owners. Some were oral and some were in writing.

Q. Did you ever transfer any of your interest in the property described in the complaint to any other person? A. Yes, sir.

Q. State to whom and when?

A. I sold half of my interest to Mr. Archibald some time in 1913.

Q. January 3, 1913? A. I think so.

Q. And as far as you know Mr. Archibald has half of whatever interest you have in the property?

A. Yes, I sold him half of my interest in the property.

Q. Now, along about July, 1910, was there a survey made of the property described in the complaint by anybody?

A. About that time; I can't state the date.

Q. Just state the circumstances and the conversations between yourself, Mr. Treat and Mr. Ellis in regard to it, in regard to making this survey.

At that time they were making a good many locations in that vicinity on account of the value shown in the Cliff and in order that there might be no question as to the boundaries and that the claims were properly staked, I saw Mr. Ellis and suggested



(Testimony of Edmund Smith.)

that a survey be made and if any of the stakes were down, they be replaced and the lines thoroughly marked and in that conversation he agreed with me.

Q. That is, Mr. Ellis agreed with you that that should be done?

A. Yes; that that was the proper thing to do and Mr. Storm was employed to make the survey, which also would be the basis of a survey for patents, save doing the manual part of the labor later on. [110—35]

Q. Do you know of Mr. Storm's making the survey?

A. I know about his giving me the field notes—I wasn't on the ground with him.

Q. Did you and Mr. Ellis have any conversation about that time in reference to placing amended location notices, posting them upon this property?

A. We did; the survey varied somewhat from the original locations, the descriptions were rather indefinite; I suggested making amended locations of the mining claims.

Q. Did you prepare amended locations for posting? A. I did.

Q. For posting?

A. For posting—prepared them in duplicate.

Q. Where did you get the data to prepare these amended locations from?

A. Mr. Storm's field-note book.

Q. Mr. Storm was the surveyor who made it?

A. The surveyor who made the survey.

Q. What did you do with those amended location

(Testimony of Edmund Smith.)

notices that you prepared?

A. Well, as I recollect it, they were signed in my office by all of us; I know they were signed by Mr. Treat and myself and I believe they were signed by Mr. Ellis. Mr. Ellis came in and got them and was to take them down and place them on the ground and either record them himself and we were to pay our *pro rata* portion of it or he should turn it over to the Cliff Mining Company and they could pay for recording it and charge to the royalty account.

Q. Do you know whether you made out location notices for each of the eight claims? [111—36]

A. Each of the eight claims.

A. Did you state what you did with those eight location notices after they were prepared?

A. I gave them to Mr. Ellis for posting on the ground and recording.

Q. Have you seen them since?

A. I have never seen them since—I supposed they were on the ground.

Q. Have you examined the records to see if those amended location notices were recorded?

A. I have.

Q. What was the result?

A. They were not recorded,—at least, I couldn't find them.

Q. Can you state from your memory whether or not those amended location notices defined the respective interests of the three of you in the property in controversy? A. They did.

Q. State how that was.

(Testimony of Edmund Smith.)

A. Ellis 80%, Treat 10% and my own 10%—I put that in for Ellis' protection, because otherwise if it was not so designated, we would be equal owners in the property.

Q. Did Ellis read those amended location notices?

A. He read them.

Q. Did he make any protest to them?

A. Never, never said a word about it, never spoke to me about it since; I never knew but what they were recorded until this difficulty came up.

Mr. DONOHOE.—We at this time demand of the defendant that he produce those amended location notices which were delivered to him as the witness has testified to. [112—37]

Mr. GANTY.—We have no knowledge of such location notices as have been testified to. I will put the defendant on the stand and he will deny that they were ever delivered to him.

By the COURT.—If you say you haven't got them, you can't produce them.

Q. Did you describe how your respective interests were stated in those notices?

A. I did; I stated in answer to your question that the notices themselves provided that Ellis owned 80%, Treat 10% and myself 10%.

Q. Did Ellis after reading those in your office make any objection to them whatever?

A. None whatever; he said he would put them up on the ground and have them recorded.

By the COURT.—Did you say those were signed by Mr. Treat?

(Testimony of Edmund Smith.)

A. Yes, sir, they were signed by Mr. Treat in my office and I think by Ellis; they were delivered to Ellis and I had already signed them in the office.

Q. Your best recollection is that you and Treat signed? A. Yes, sir.

Q. And Ellis signed them in your office?

A. Yes; I know that Treat and I signed them and I am quite sure that Ellis signed them in the office, although I am not sure of that—it was sometime ago and I myself dismissed it after it was done.

Q. Drifting back to that survey again—what was the cost of the Storm survey?

A. Four hundred dollars, I think.

Q. Who paid it?

A. It was paid by the Cliff Company and charged to Ellis, Treat [113—38] and myself according to our interest in the property.

Q. It was deducted from your royalty?

A. It was deducted from our royalty—our royalties.

Q. Did Ellis at that time ever make any announcement that he should pay all of that?

A. Never—there never was a question raised by Mr. Ellis in regard to the ownership of this property until since I went out to Seattle; up to the time of the commencement of this action, as far as I know, I never heard of it.

Q. Do you remember of a conflict between the property in controversy and certain claims, what is known as the Bluff Mining Co.?

(Testimony of Edmund Smith.)

A. I knew there was such a thing, I heard there was and I saw their notices of application for patent, of the Bluff Company.

Q. That came up after?

A. That came up after I went to Seattle.

Q. After you left for Seattle?

A. Yes—I wrote Mr. Ellis and advised him about it.

Q. There were certain costs incurred in that matter—did you pay any proportion of the costs?

A. The court costs and the filing, etc., were paid by the Cliff Mining Co. and charged to the respective accounts of the owners of the property. The attorney's fee, Mr. Bunnell sent me a statement of my proportionate part of it and I paid it to him—I had Lathrop do it for me and I paid Lathrop.

Q. Do you remember what Mr. Bunnell's attorney's fees were in that suit—what was the total amount of them?

A. One thousand dollars.

Q. And what proportion of it did you pay?

A. I paid \$50, that was half—I had sold half of my interest to Mr. Archibald. [114—39]

Q. That was five per cent?

A. That was five per cent.

Q. I hand you a statement entitled Cliff Mining Company, Cash paid out in re Gold Bluff suit, April 1st, 1914, and ask you if that is the statement sheet of the Cliff Mining Company for the moneys paid out by them in connection with that Bluff suit.

A. Yes, that is the statement.



(Testimony of Edmund Smith.)

Q. Was the amount of money stated there deducted from the royalties? A. It was.

Q. And what proportion of that expense was deducted from the royalties coming to you?

A. Five per cent.

Mr. DONOHUE.—We offer this statement in evidence.

It is admitted without objection, marked Plaintiffs' Exhibit "G," and reads as follows:

**Plaintiff's Exhibit "G" [Statement, April 1, 1914,  
Paid Out In Re Gold Bluff Suit].**

**CLIFF MINING COMPANY.**

Cash Paid Out In Re Gold Bluff Suit.

April 1st, 1914.

1912.

Sept. 30.	Vch. 1829.	L. W. Storm a/c survey	\$ 40.00
Nov. 4.	Vch. 1898.	L. W. Storm a/c board	7.00
Nov. 5.	Vch. 1902.	J. S. Hickey, a/c survey helper	21.25
Nov. 5.	Vch. 1902.	H. N. Carter a/c survey helper	21.25
Nov. 30.	Vch. 1952.	L. W. Storm a/c survey helper	113.00
Dec. 30.	Vch. 2003.	C. E. Bunnell a/c cer. copies, notices, etc.	32.50

1913.

Feb. 1.	Vch. 2052.	F. Nelson a/c launch fare	3.00
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(Testimony of Edmund Smith.)

Feb. 24.	Vch. 2081.	C. E. Bunnell a/c fil- ing fees, etc.....	25.40
Nov. 28.	Vch. 2539.	L. W. Storm a/c de- scriptions & map of gr.....	60.00
Nov. 28.	Vch. 2542.	W. Lee a/c witness fee .....	5.00
Dec. 6.	Vch. 2555.	W. Callaghan a/c launch fare for witnesses.....	6.00
Dec. 11.	Vch. 2572.	C. E. Bunnell a/c cer. copies loca. notices.....	5.00
1914.			
Jan. 12.	Vch. 2626.	C. E. Bunnell a/c bal. costs to court .....	1.65

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\$341.05

Proportion Charged to Owners.

H. E. Ellis.....	80%	272.84
G. C. Treat.....	10%	34.11
E. Smith.....	5%	17.05
L. Archibald .....	5%	17.05

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341.05

[115—40]

Q. Do you know who employed Mr. Bunnell to appear in this suit for Mr. Ellis and the owners of the property in controversy?

A. I know what Mr. Bunnell represented to me. I offered to prepare the papers, wrote to Mr. Ellis that I would prepare them without any costs and the next thing I heard was that Mr. Bunnell had pre-

(Testimony of Edmund Smith.)

pared the papers and told me he had been employed by Mr. Ellis.

Q. And he sent a statement of his fees?

A. He sent me a statement of his fees and I paid him my part of it, 5%.

Q. You paid \$50 of the thousand dollar charge—that is 5% of the property?

A. That is the way I figured it.

Q. You had previously sold half your interest to Mr. Archibald?

A. Yes, I notified Mr. Archibald of the payment and I understood he paid his portion, but I don't know about that of my own knowledge.

Mr. DONOHUE.—That's all.

Cross-examination by Mr. GANTY.

Q. I am going back to the beginning of this story and referring to your evidence regarding the smelter account for this ore shipped by you under the agreement evidenced by Plaintiffs' Exhibit "A"—you said that that accounting was destroyed, I believe, by fire.

A. No, I didn't state that. I left it in the offices that I occupied before I left and I find upon my return here and I have other evidence that the building was destroyed.

Q. Did you have any other papers connected with this case along with that instrument? [116—41]

A. The articles of incorporation were left somewhere in the office of the Mystic Gold Mining Company, and other papers.

(Testimony of Edmund Smith.)

Q. That is the articles which were drawn up pursuant to your agreement to incorporate?

A. Yes, sir.

Q. You left all those papers in what was your office at that time?      A. Yes, sir.

Q. In charge of Mr. Bunnell?

A. Well, I simply left them there; I didn't want to pay freight on anything unless I thought it could be of some use in the future.

Q. To the best of your recollection \$36 or so was about all the net returns on that ore?

A. That was about all the net returns after deducting what the smelter deducted and as I remember the gross returns, the gross values, was twenty-six dollars and some cents per ton, coming to, as I recall it, about \$106, which was the total extraction allowed for the ore.

Q. What boat was that ore shipped on, do you remember?      A. I couldn't say, no.

Q. The claim from which this ore was taken and which is described in Plaintiffs' Exhibit "A," in what we term a contract and mortgage—I presume you would consider it such also?

A. I simply drew up a contract according to our agreement at that time.

Q. That contract provided, did it not, that it should be construed as a mortgage?

A. I think it does, yes, sir, but I don't want to testify as to its legal effect.

Q. At any rate it was so construed by all the parties thereto? [117—42]

(Testimony of Edmund Smith.)

A. I don't know that we placed a construction upon it. We made a contract with Mr. Ellis, gave him this money to develop this property and we tried to prepare a contract to protect both ourselves and Mr. Ellis.

Q. You prepared that you said?      A. Yes, sir.

Q. Now, I will read from this exhibit "A" as follows:

"This contract is deemed and considered by the parties hereto as a mortgage on said mining claim, with full power of sale in the manner provided by law for the sale of real estate under real mortgage and for that purpose said party of the first part gives, grants, sells and assigns to the parties of the second part said mining claim, but as security only for said five hundred dollars and upon payment of said sum of five hundred dollars by the party of the first part at any time within six months from date hereof and the delivery to the parties of the second part of one-quarter of smelter returns from said shipment, less freight and smelter charges, this agreement to be null and void, otherwise to remain in full force and effect."

Q. How did you construe that at the time?

A. Well, I simply construed it as an instrument drawn up for the protection of Mr. Treat and myself for the advancement of this money.

Q. Is it not a fact that you construed it as a mortgage upon this property?



(Testimony of Edmund Smith.)

A. It says so here and apparently we all construed it as that, because we say so, but I am not testifying as to the legal effect of the paper.

Q. But you considered it as a mortgage at the time? A. Yes, sir. [118—43]

Q. And what was the general purport of your conversations then with Mr. Ellis, after you had received these smelter returns and before you incorporated this company or signed this agreement to incorporate the company?

A. It covered probably a vast field—Mr. Treat and I had invested this money or advanced this money; we were interested to that extent—we were interested in the development of this property in particular and the country generally and we discussed many ways and means for the development of this property and opening it up.

Q. Well, your interest in this property is shown by that agreement, exhibit “A,” is it not?

A. Up to the time of the agreement, that was made in the following year, 1908.

Q. Then the relative status of the ownership, as far as yourself and Treat are concerned, in and to that property, remained unchanged until the contract of July 9, 1908, was entered into?

A. That is the contract preparing for the incorporating?

Q. Yes.

A. Yes, as far as I can recall—I don’t know of anything that changed it in any way.

(Testimony of Edmund Smith.)

Q. You stated that you drew up some articles of incorporation under that agreement to incorporate.

A. Yes, sir, I think that is admitted in the answer.

Q. Who drew these articles up?

A. I think I did, I don't know; I think Mr. Bunnell was in the office with me but I am not quite sure I drew the articles up.

Q. If not drawn by you they were drawn under your supervision?

A. They were drawn in the office and I think they were drawn by me—that proposition of Mr. Ellis and the other papers for thoroughly organizing a corporation.

Q. What date were they drawn?

Mr. DONOHOE.—If the defendant has in his possession a copy of [119—44—46] those articles of incorporation, I think it is but fair to present them to the witness for examination. I understand he has certain copies.

Mr. GANTY.—You have been given to understand no such thing. Mr. Smith testified that he left them in the office with Mr. Bunnell. We have got one and we are going to produce it.

Q. What was the name of the proposed incorporation?

Mr. DONOHOE.—We object to that without first showing the witness the articles themselves—and the articles themselves would be the best evidence.

By the COURT.—Yes, the statute says, if the witness is testifying regarding a paper you have, he must be shown the paper.

(Testimony of Edmund Smith.)

Q. I will ask you if those are the articles of incorporation you testify as being drawn up by you or under your care? (Handing witness paper.)

A. Yes, I should say they were, that is my stationery and that is the name of the company as I remember it.

Q. State the name of the proposed incorporation that was agreed upon.

A. Well, that is in the contract of July 9, 1908, which is not before me now.

Q. In whose charge were those papers left after being signed?

A. Well, I don't know, Mr. Ellis has this; I don't know whether it was left in my charge or where they were left; I suppose they were left in the office.

Q. Your memory isn't perfectly clear on every transaction that took place at the time of signing these articles?

A. My recollection is clear on almost everything in connection with it. Of course, I don't pretend to remember every word that was used by the parties during this transaction; I know that all preliminary matters were cleaned up and terminated and embodied in the contract of July 9, 1908. I notice these articles have been mutilated by somebody by a pen having been drawn through the names of the signers; I don't know who did that. [120—47]

Q. You don't know anything about that?

A. I don't know anything about that.

Q. You are not willing to testify, then, as to

(Testimony of Edmund Smith.)

whether or not at the time these articles were signed, they were left in your office?

A. No, I am not. All of the papers that I had in the office except matters that I thought might be of interest to me below or some personal matter that was still pending, I left in the office, I can't name the papers—there were probably a half dray load of letter files and other files and papers.

Q. I hand you herewith another copy of these articles of incorporation, which you will notice has the signatures torn from the bottom of it, and I will ask if you identify that as being a copy of these articles of incorporation.

A. Well, I should say it was a copy of it; part of it seems to be detached and been removed and thrown away—the latter part of one page is torn off; I should say that that is on my stationery—the name is the same.

Q. I hand you another copy and ask you if that also is a copy of those articles.

A. So far as I can see it is the same as the first one submitted to me—instead of the names being torn off, a pen has been drawn through the names of the parties.

Q. Here is another paper, and I ask you what that is. (Handing witness paper.)

A. Without comparing it and checking it up, I should say it was another copy of the Articles of Incorporation.

Q. Is that your signature at the bottom?

(Testimony of Edmund Smith.)

A. That is my signature at the bottom.

Q. Do you know the signature of Mr. Treat?

A. I think I do.

Q. Is that his signature?      A. Yes, sir.

Q. Is that Mr. Ellis' signature? [121—48]

A. That is Mr. Ellis' signature to the best of my knowledge.

Q. To the best of your knowledge, these signatures are the signatures of these parties, whose names appear on these Articles of Incorporation?

A. Yes, I testify that they are.

Q. Then when you say you left these articles in Mr. Bunnell's office you are mistaken?

A. No, I am not mistaken; I don't know where you got them; I say all the papers I didn't want to take with me and didn't need, I left in the office.

Q. You do not wish to be understood as saying that these papers were destroyed, that any papers were destroyed that belonged to this corporation, by agreement, in Mr. Bunnell's office?

A. I left everything and the last I knew of them, to the best of my recollection, they were in the office, —I don't know where they were and I don't know who took them out.

Q. When did you leave them there?

A. I don't remember seeing those Articles of Incorporation until some time after their execution.

Q. How long after their execution?

A. Probably the following year, at intervals.

Q. Did you see them a year after their execution?



(Testimony of Edmund Smith.)

A. I can't say as to that; I don't remember, haven't any distinct recollection of having seen them at all—I knew they were executed and prepared.

Q. You don't remember seeing them at all after they were executed?

A. Not any specific recollection of it, no—I can't name any time I saw them or how they were filed away, or anything else. I simply know that all the papers were left in Mr. Bunnell's office except a few I took with me to Seattle.

Q. And you don't know how this one became mutilated?

A. I don't know how any of them became mutilated. [122—49—50]

Mr. GANTY.—I ask that these be marked for the purposes of identification. (The four copies of Articles of Incorporation of the Mystic Gold Mining Company are marked for identification, Defendant's Exhibits 1, 2 and 3, and four.)

Recess to 2.

These four copies of Articles of Incorporation were later in the course of the trial admitted in evidence as Defendant's Exhibits 1, 2, 3, and 4. They are duplicates and read as follows:

**Defendant's Exhibits 1, 2, 3 and 4.**

**ARTICLES OF INCORPORATION**

of the

**MYSTIC GOLD MINING COMPANY.**

(The copies of these Articles are omitted, for the reason that the original exhibits are forwarded with

(Testimony of Edmund Smith.)

the record to the Appellate Court, for the purposes of physical examination.)

Tuesday, October 5, 1915.

Afternoon Session.

Continuation of cross-examination of EDMUND SMITH by Mr. GANTY.

Q. I understood you to say that among the papers which you thought you had left in Mr. Bunnell's office were these Articles of Incorporation, which are in evidence here as defendant's exhibits and also an agreement from Mr. Ellis to deed his mining property in controversy to this corporation.

A. Not an agreement—a proposition, as I remember it.

Q. Do you remember what proposition?

A. No, I don't remember the details of it. Have you got it?

Q. You don't remember it was an agreement, but a proposition?

A. That is as I remember it—that was the usual form.

Q. I ask you if that is the proposition or agreement or whatever it is. (Handing witness paper.)

A. I presume that it is; that is what I took it to be.  
[123—51—53]

Q. It was drawn up by you, was it?

A. I presume so; it is on my stationery.

Q. Is this another copy? (Handing witness paper)

A. This seems to be—I haven't compared them; it

(Testimony of Edmund Smith.)

seems to be a copy of the other; I haven't checked them up.

Q. And that also? (Handing witness paper.)

A. That seems also to be another copy; I say I haven't checked them up.

Q. You acknowledge that to be Mr. Ellis' signature? You know his signature?

A. I know his signature; yes, that is his signature to the best of my knowledge.

(The three documents last referred to are admitted in evidence, without objection, and marked Defendant's Exhibits 5, 6, and 7.)

Mr. DONOHUE.—They are all duplicates?

Mr. GANTY.—They are all duplicates; yes, sir.

These exhibits #5, 6 and 7, which are duplicates, read as follows:

**Defendant's Exhibits Nos, 5, 6 and 7 [Proposition of H. E. Ellis, Dated July 21, 1908, to Mystic Gold Mining Co., Re Incorporation].**

“Valdez, Alaska, July 21, 1908.

To the Mystic Gold Mining Company, a corporation:

For and in consideration of the issuance to me of all of the capital stock of said corporation, to wit, two hundred thousand (200,000) shares, I will convey by good and sufficient deed of conveyance those certain eight (8) lode mining claims situated on the northerly side of Valdez Bay, known as the Mystic Group.

I will also donate to said corporation 20 per cent of said stock, or forty thousand (40,000) shares, said shares to be sold by said corporation, or such thereof

(Testimony of Edmund Smith.)

as may be necessary to raise money sufficient to develop said mining property and install reduction plant thereon; said forty thousand shares to be known as treasury stock and to be used as the board of directors may deem for the best interests of said corporation.

H. E. ELLIS,

Q. You, think, stated that you have no clear recollection as to what was done with those documents after they were signed?

A. No, I have not. I was drawing a good many papers, I have drawn a good many papers since 1907 and I haven't a clear recollection. I suppose they were left in the office with other papers that I left there when I moved away from the city. I know they were not used as I said. [124—54]

Q. And that is all you remember of it at this time?

A. That is all I remember of it. I know as a matter of fact, as far as those are concerned, it was all settled up when the Crane option was given everything was cleaned up between us.

Q. At the time the Crane option was given, that is Plaintiff's Exhibit "B"?

A. I don't know the number of the exhibit; I think it is in evidence here.

Q. That is the instrument that was entered into (handing witness paper), and you say at that time all these things were settled?

A. Yes, that is the date; that is the time that everything between us was settled up as I testified this morning.

(Testimony of Edmund Smith.)

By the COURT.—What is the date of that?

Mr. GANTY.—It is dated the 5th day of June, 1909. It is headed Memorandum of Option Agreement—it is the Crane agreement. This was not introduced in the pleadings and it is a point I wish to make clear to the Court, the very point testified to by this plaintiff, that when this instrument was entered into, the respective rights to this property had been settled, that is exactly our contention.

The WITNESS.—I didn't state that.

Q. In the agreement to incorporate, it was part of your obligation in that agreement that yourself and Mr. Treat were to sell the treasury stock, was it not?

Mr. DONOHUE.—We object to that question on the ground that the instrument speaks for itself.

By the COURT.—Yes, it says so; it has been introduced and is part of the evidence already.

Q. Did you secure any subscriptions at all?

A. No, sir, none whatever. [125—55]

Q. How long after the execution of this agreement to sell this stock was it before you became aware of the difficulties you would experience in selling this stock?

A. I don't know; we experienced difficulties in the beginning. As I stated before, the town was in a pretty bad shape—it was the year after the Reynolds break-up here in the town, and we experienced difficulties right along until we met Mr. Crane, sufficient difficulties so we couldn't place the stock.

Q. Was the financial condition of the town the same as just testified to at the time that this agree-



(Testimony of Edmund Smith.)

ment was entered into to sell the stock?

Mr. DONOHUE.—We object to the latter part of that question, to sell the stock. We contend that the contract of July 9, 1908, provided that Treat and Smith were to devote to the enterprise their time and attention in selling the stock—there was no agreement to sell the stock.

Objection overruled; plaintiffs allowed an exception.

A. I presume it was— there was a little change occasionally, but practically the same.

Q. Did you notify Mr. Ellis of the difficulties you experienced in selling this treasury stock?

A. Yes, we had several conversations with him.

Q. About what time, did you so inform him?

A. It was discussed at various times, when I met Mr. Ellis on the streets, and he was in the office a few times when the matter was discussed and Mr. Ellis understood the condition of the town as well as I did—I think he did, at least.

Q. About what time was it agreed that you should hold this contract to incorporate in abeyance?

A. I don't understand that there was any agreement to hold it in abeyance at all. [126—56]

Q. At the time you entered into this contract, you did not anticipate any difficulty in selling the treasury stock? A. Which contract?

Q. The contract to incorporate and sell the stock?

A. The contract of July 9, 1908?

Q. Yes, the contract of July, 1908?

A. I certainly did not anticipate to get out on the

(Testimony of Edmund Smith.)

street and sell to the first man we met. We did expect to have difficulty in selling it, because of the condition the town was in and the unknown character of the district at that time. There had been no producing mines or discoveries of any value that I know of in that section.

Q. Did you notify Mr. Ellis at that time that you expected some difficulty in selling this stock? Did you so inform him?

A. I don't know that I said that—I don't know whether I did or not.

Q. At the time that the contract with Crane was entered into, did you own any further interest in this property, except such as you acquired under the incorporation agreement?

A. Well, at the time the contract was signed by Mr. Crane and executed, why we claimed that we did.

Q. What was that interest?

A. That was a 20% interest, ten per cent each to Mr. Treat and myself.

We acquired it partially through the money we had advanced for the development of the property and partly through the contract of 1908, the agreement to incorporate, and then by specific agreement with Mr. Ellis just prior to the execution of the Crane contract, as I testified this morning.

Q. If I understand you right, then, you acquired a further interest than the one you held under the contract to incorporate on the day that the lease to Crane was made?

A. I didn't say we acquired a different interest; it

(Testimony of Edmund Smith.)

was simply [127—57—58] changed; the form of our interest was changed, as I stated this morning. We were to have —it would be about 25% of the stock in the incorporation, so far as Mr. Ellis' and our interests were concerned, because 20% went into the treasury; we were to have 20%, Ellis 80% and 20% went into the treasury; that was the contract. Now, before entering into the contract with Mr. Crane, Ellis asked us what interest we expected in the property at that time. As I said this morning, we told him we expected 20% interest in it as provided for in the contract of July, 1908. The only change was, changing it to an interest in the specific property as distinguished from an interest in the stock.

Q. It is a fact, that at the time this lease to Crane, the agreement with Crane, was entered into, that yourself and Treat did jointly claim a one-fifth interest in this property? A. Yes, sir.

Q. And that interest you claimed for the reasons you have just stated?

A. Yes, sir, for the reasons stated, the money we put into it and the contracts, etc.

Q. Did you ever acquire any further interest after this lease to Crane was entered into?

A. No, not to my knowledge.

Q. Did Mr. Treat acquire any, to your knowledge?

A. I don't know what Treat acquired.

Q. You have acted as Mr. Treat's attorney, subsequently?

A. In several things, yes, but Mr. Treat acted for

(Testimony of Edmund Smith.)

himself in this matter, Ellis for himself and I for myself.

Q. You and Mr. Treat were acting jointly during this period?

A. I had a power of attorney for quite a number of years from Mr. Treat, a limited power of attorney, and he had one from me,—properties we were interested in jointly. [128—59—60]

Q. And this was one of them?

A. I don't know, I don't know what interest you refer to—I don't know what power of attorney you refer to.

Q. I am asking you whether you acted as attorney or attorney in fact for him.

A. I don't know whether I did.

Q. You don't remember?

A. I don't remember, no; as I stated to you, I held his power of attorney at some time, but I don't know just when it was or what it referred to.

Q. I hand you a paper and ask you if that is your signature.

A. I think so; yes, that is my signature and the signature down below is mine—George C. Treat by E. Smith, attorney in fact.

Q. You will admit at this time then that you were acting as his attorney in fact in the matters connected with this lease?

A. I admit I was acting in the matter referred to in that correspondence—I don't know what it is.

Mr. GANTY.—We offer this paper in evidence.

Mr. DONOHOE.—This is Mr. Ellis' signature too, is it?

(Testimony of Edmund Smith.)

A. Yes, that is Mr. Ellis' signature, that is, to the best of my knowledge it is.

The paper is admitted without objection, marked Defendant's Exhibit #8 and reads as follows:

**Defendant's Exhibit No. 8 [Letter, December 12, 1911, A. E. Ellis et al. to Cliff Mining Co.].**

“Valdez, Alaska, Dec. 12, 1911.

Cliff Mining Company,

Gentlemen: We enclose you herewith objection to certain items charged against the owners and lessors of the property, and also a claim for the tailings which were allowed to go to waste during the first year's operation. There is a large number of items on the various statements, beginning with statement dated July 1st, 1910, covering period from August 1st, 1909, such as supplies, sundries, and many that are not so designated, that we believe are not chargeable in computing the royalties.

We would request that your Board of Directors appoint one [129—61] of your number, we would suggest either Mr. Kreamer or Mr. J. C. Martin, to meet with the undersigned, with the vouchers of the Company and check over these various items, and compare same with vouchers, and if correct and proper items, we would waive the same, and if we believe they are not proper charges, we would file specific statement claiming the same, which we are not able to do from the statements furnished us.

It is our hope and desire to adjust any differences that may now, or hereafter exist between the Company and ourselves, and we will continue as in the



(Testimony of Edmund Smith.)

past, to even waive matters to which we believe we are legally and justly entitled of small value, for the sake of harmony, so long as the Company will meet us in the same spirit. We believe that with either Mr. Kreamer or Mr. Martin by comparing the statements, with the vouchers covering the same, we can readily ascertain each item and how the same should be charged.

Hoping that this matter will be received and considered in the same spirit in which it is made, and that we may get together and amicably adjust these differences, we are

Very truly yours,  
A. E. ELLIS,  
EDMUND SMITH,  
GEO. C. TREAT,  
By E. SMITH,  
Attorney in Fact."

Q. When did you meet Mr. Crane for the first time?

A. It was a short time, a day or so, a few days, before the option was given.

Q. Who introduced you to Mr. Crane?

A. I can't say who introduced him to me—my recollection is that it was Mr. Treat, but I am not certain.

Q. You stated in your direct examination that you tried to get Mr. Crane, who represented that he owned a stamp-mill, to take up this treasury stock?

A. Yes, sir.

Q. You took him to see the property?

(Testimony of Edmund Smith.)

A. He was taken down there—I didn't go with him.

Q. He went with Treat and Ellis?

A. Yes, and maybe there were others, I don't know just who went down—I know the arrangements were made for him to go down with the parties. [130—62]

Q. Then you presumed at that time, at least, that this incorporation agreement between yourself and Mr. Treat and Mr. Ellis was still alive?

A. Why, I presume it held, as I told you before, and the reasons for it.

Q. Then, as a matter of fact, you yourself did not procure this offer to lease from Mr. Crane?

A. I don't know who procured it—I think it came voluntarily from Mr. Crane. I don't know whether Mr. Crane *forst* told me what his offer was or whether it was communicated to me by Mr. Ellis or Mr. Treat.

Q. Do you remember its being stated by any of the parties when you met, when Mr. Crane was present, as to who first notified him of this property and told him about it?

A. Yes, I was so informed; I was informed it was through, I think, Mr. Bob Coles; I think Mr. Bob Coles took him to Mr. Treat, as I understood it; Coles was working for the company that Mr. Crane represented—it was the Haines Company and some people in Seattle, I think, had bought the stamp mill to operate somewhere on the glacier, and the matter come up and Mr. Coles, as I understood at the time, took Mr. Crane and in-

(Testimony of Edmund Smith.)

roduced him to Mr. Treat and told him about this property.

Q. Did you represent yourself to Mr. Crane at that time as being a one-fifth owner of the property, yourself and Treat together?

A. I represented to him the conditions as they existed at that time, the status of the proposition.

Q. And Mr. Ellis came into your office and asked what interest each of the parties expected in the property under this option to Crane, you said—I will read your answer from your direct examination “Mr. Ellis came into the office from his meeting with Crane and says, ‘What interest do you expect in this property if we carry out this lease’? I told him we expected 20% as provided [131—63] for in the contract and Mr. Ellis says, ‘Well, this will save you some work and some expense.’” Is that about the facts?

A. Something along that line; that is the purport of it.

Q. You are perfectly clear at this time that you claimed a 20% interest in the property for yourself and Treat? A. Yes, sir.

Q. You were authorized to speak for Mr. Treat at that time? A. Mr. Treat was present at that time.

Q. But you were speaking for him?

A. We were discussing it together; I think I made a statement—we all discussed it; and Treat made a statement in regard to it too. We told him that we considered that our money had developed and shown the only value that was known in the property and

(Testimony of Edmund Smith.)

we considered it in the nature of a grubstake contract that we had no money to loan; that we took our chances on the mining properties in the hope of making some money out of it.

Q. This conversation took place prior to the signing of the lease to Crane, prior to the signing of the option to Crane?

A. Yes; Crane was going away that night and this was along in the evening, some time after seven o'clock; I don't know what hour it was.

Q. How did you come to fix the percentage you were to receive as royalty at 15%.

A. The same as we would have come to it if we had said 16—we went into the back room and it was uncertain whether Ellis would go ahead with the proposition with Crane; we didn't know—he hadn't said he would or would not and we decided to make some concession—it might have been any other concession.

Q. It might have been any other interest if you could have got it?

A. It might have been anything that we decided upon at that time; we just knocked off or gave Mr. Ellis 5% of what we thought we were entitled to.  
[132—64]

Q. In other words, you simply agreed that that was the biggest percentage that Ellis would allow you?

A. I don't know that we considered that. I was uncertain whether the contract would go through and we were anxious to get the property developed, not

(Testimony of Edmund Smith.)

only for our own account, but for the benefit of the community. If there were valuable mines here we wanted to know it and have it developed and we made that concession for those reasons.

Q. You are sure those are the reasons.

A. Yes, those are the reasons.

Q. Now, reading here from the complaint in this case on page 7, paragraph 7:

“That at the time of the negotiations which resulted in the contract described as Plaintiffs’ Exhibit ‘B,’ the said defendant Ellis insisted on a higher rent or royalty than that named in the contract, and the said Crane refused to agree on a higher royalty, and thereupon plaintiffs Treat and Smith, believing the lease to be advantageous, agreed that the defendant should have eighty-five per cent of said royalty instead of eighty per cent thereof, to which percentage he was entitled at that time as the owner of eighty per cent of said mining claims, in order to induce defendant to enter into said lease.”

How do you explain that?

A. Well, that is the version the attorneys got from what information they got from Mr. Treat, I presume.

Q. And it is not the correct version?

A. I have given you the statement and as to their application, that is a matter for the Court—I don’t care to testify as to the effect of any difference between them.

Q. It is a fact, Mr. Smith, that you drew up the



(Testimony of Edmund Smith.)

first agreement between yourself and Mr. Ellis and Mr. Treat regarding the Mystic claim and the \$500 advance?

A. Yes, I think I drew all those papers.

Q. You drew all the papers—you drew the contract to incorporate, and you drew the incorporation papers?

A. Yes, sir, they were drawn in my office and I presume I drew them. [133—65-69-70] My recollection is that I dictated the option myself.

Q. The option to Crane?

A. The option to Crane.

Q. And the lease to Millard?

A. Yes, and the lease to Millard.

Q. And all these various notices sent out?

A. I don't know how many notices there may have been sent to the Cliff when I was out, but all notices my name appears on, I probably dictated, but it was after a conference with Mr. Ellis and Mr. Treat and they were in accord with what we had decided to do.

Q. Did you send any notices to the Cliff Mining Company while you were out?

A. Yes, after I moved to Seattle I sent a notice to them; I moved to Seattle and sent a copy of it to Ellis and wrote Ellis at the same time.

Q. And sent one to Treat at the same time?

A. I don't know whether I did or not; I imagine I sent him copies of the letters also, but I am not certain as to that, but I know I wrote Ellis in regard to it.

Q. Did you act as attorney for the Cliff mine?

(Testimony of Edmund Smith.)

A. In a few matters; yes.

Q. When did you act so?

A. I can't tell when,—there were several little matters; I prepared some contracts for them.

Q. I mean relative to the Cliff?

A. For the Cliff Mining Company; I prepared contracts for them—I think I prepared some contracts for driving tunnels and I think I prepared some contracts for piling and it is my recollection that I prepared an assignment of this lease from Millard to the Cliff Mining Company. [134—71—73]

Q. Were you regularly retained by them?

A. No, I was not; when they had any work they cared to submit to me, I did the best I knew how and charged them for that specific work.

Q. At the time this agreement to incorporate was entered into, did you—I think you testified, however, that you did not—hand Mr. Ellis any written release or anything of that kind?

A. Except that contract itself; we regarded that as a release of everything—I had nothing to release. This other contract, as I recall it, was not of record, this contract of 1907.

Q. Did you have a copy of it in your possession at that time?

A. I presume I did; I have one now and presume I had one at that time; every paper that was ever prepared, Ellis was delivered a copy, and Treat a copy and I retained a copy.

Q. You had a copy of the contract and mortgage at the time of the incorporation?

(Testimony of Edmund Smith.)

A. I presume so—I had it at the time it was drawn and presume I had it in my possession at that time.

Q. You testified concerning some amended locations; you stated, I believe, that yourself and Treat signed those location notices but that you were not quite sure whether Mr. Ellis signed them or not?

A. I was not positive whether Ellis signed them or not—I know Treat signed them and I delivered them to Ellis.

Q. Did you consider it essential that the original signatures of the parties should be on these location notices?

A. I don't know that I considered that matter at all, but each party was considered in it. As a legal question, I don't know whether it was essential or not, I wouldn't testify as to the legal requirements of the location of mining claims—I will tell you what we did.

Q. What became of those location notices?

A. I gave them to Mr. H. E. Ellis. [135—74]

Q. You prepared them?

A. I prepared them at the suggestion of Mr. Storm, the surveyor, and I took it up then with Mr. Ellis and Mr. Treat and they said, "All right; go ahead," and I prepared them, and used his field-notes for the description of each claim, that is, Mr. Storm's field-notes.

Q. (By the COURT.) Was that after the Cliff was running?

(Testimony of Edmund Smith.)

A. Yes, that was about—well, I can't say—it was after it was in operation; I think it was about the time of the location of the Sealey-Davis property, if I remember correctly.

Q. When did you first hear about this adverse suit and Mr. Bunnell having been retained to draw the papers up?

A. I heard that in Seattle. I had the papers sent to me from here when I went to Seattle and I noticed the application for patent of the Gold Bluff Company, and I wrote to the Cliff Mining Company demanding of them that they defend that suit under their lease, which they contracted to do, that is, they contracted to prevent any locations or any adverse claims being asserted during the life of the lease. I also wrote Mr. Ellis in regard to the matter and told him—well, I wrote him in regard to the matter and I did offer to prepare the adverse claim and complaint and forward them to him.

Q. Did you not advise, as your opinion, that the Cliff Mining Company under this lease should stand the expense of this adverse suit?

A. My contention was that the Cliff Mining Company should defend that suit and pay the expenses.

Q. Did you notify Mr. Ellis to that effect?

A. Not in that particular matter, except I did in this particular letter—I don't remember what I said in that letter, except my offer to do this work.

[136—75—78]

Witness excused.

[**Testimony of George C. Treat, on His Own Behalf.**]

GEORGE C. TREAT, one of the plaintiffs, called and sworn as witness in his own behalf, testified as follows:

Direct Examination by Mr. DONOHOE.

Q. Your name is George C. Treat and you reside in the town of Valdez?      A. Yes, sir.

Q. Did you reside here in 1905?      A. Yes, sir.

Q. You are acquainted with Edmund Smith?

A. I am.

Q. And with H. E. Ellis?      A. Yes, sir.

Q. And the Cliff Mining Company?      A. Yes, sir.

Q. You are familiar with the mining claims in controversy in this action?      A. Yes, sir.

Q. How long have you known Mr. Ellis?

A. I think he came to the country the year after I did, which would be—I came in 1907, I mean 1897—I think he came in '98—1898.

Q. You were pretty well acquainted with him from that time on, until the present time?

A. Fairly well.

Q. Did you some time in December, 1905, have any business transactions with Mr. Ellis in regard to money matters?

A. Yes, sir, I loaned him \$200 in December, 1905.

Q. December 15, 1905?      A. Yes, sir.

Q. Did he give you any security or any evidence of that indebtedness? [137—79]

A. Yes, he gave me a mortgage on a little piece of



(Testimony of George C. Treat.)

property on the reservation, next to a house owned by Rudolph.

Q. Did you at any time ask Mr. Ellis to repay you that amount of money?

A. I did; it was probably a year after as near as I remember. I met him on the street one day and told him I was a little short myself and if he could return the \$200, the loan I made him some time before, it would help me out and he said he could in a few days.

Q. Did he repay it to you within a few days?

A. No, he did not.

Q. Now, at the time you made this loan in December, 1905, did you demand security from Mr. Ellis?     A. No.

Q. How come you to have the security you have mentioned?

A. Well, I met him in the bowling-alley one night, I think it was, and there were two or three different ones there I loaned money to that night and I went to him and asked him if a little money would help him or how he was fixed, or something of that kind, and he said he was pretty hard up and money would help him a good deal, and I asked him how much he wanted and he said \$200 would help him, he wanted to do some work over in the gulch across the bay here and he hadn't the money to get his outfit and I gave him a check for \$200. I didn't ask for any security or anything of the kind. My impression is he gave me the mortgage the next day, if I recollect it right.

(Testimony of George C. Treat.)

Q. He said he wanted to do some work in the gulch?     A. Yes, sir.

Q. That had nothing to do with the property in controversy in this action?

A. No, it was long prior to that.     [138—80]

Q. What gulch did he mean, by the gulch?

A. Solomon Gulch, I think.

Q. That is on the opposite side of the bay?

A. Yes, sir.

Q. I hand you an instrument dated the 15th of December, 1905, which is headed mortgage, and ask you if that is the mortgage he gave you.     A. Yes, sir.

Mr. DONOHUE.—We offer this in evidence.

(The mortgage is admitted in evidence, without objection, marked Plaintiffs' Exhibit "H," and reads as follows:)

**Plaintiff's Exhibit "H."**

(It is stipulated by counsel for the parties respectively that in lieu of Plaintiffs' Exhibit "H" the following statement of facts may be substituted and incorporated in the bill of exceptions:

First. That said exhibit "H" was a mortgage given to secure the payment of \$200.00 drawn in the usual form, covering a lot and frame building situated in the town of Valdez, Alaska, owned by H. E. Ellis, which said mortgage was duly recorded Nov. 12, 1906.

Second. That in said mortgage Geo. C. Treat was named as mortgagee and H. E. Ellis as mortgagor.)

Q. Do you now recall any negotiations you had

(Testimony of George C. Treat.)

with Mr. Ellis on or about the 15th day of May, 1907?

A. Yes, at the time we advanced him the \$500.

Q. Just state the circumstances under which you came to advance him this \$500.

A. He came up to my house early one morning and I think he showed me a piece of rock, rich rock; he wanted to get out some ore, as I remember it, to ship, to test, a smelter test and wanted to borrow \$500. I told him that I knew a party down town that [139—81—83] I thought might go in and if he would take half of it, I would go in with him, it was too much for me to handle alone. I had Mr. Smith in mind and I went down to see him and he agreed to go in with me and we went up and looked at some rock that Mr. Ellis had in his house and afterwards, I think, I went back to his office, Smith's office, and advanced the money there—I gave a check for \$250.

Q. At the time you advanced that money you entered into the contract dated the 15th day of May, 1907, which is Plaintiff's Exhibit "A" in this suit?

A. Yes, sir.

Q. Now, pursuant to the terms of that contract, Plaintiff's Exhibit "A," did Mr. Ellis mine any ore from the property that is now in controversy?

A. At that time?

Q. Shortly after that.

A. Well, this shipment was made; I don't know how much ore he had in the cabin—my recollection is there was about five tons shipped out.

(Testimony of George C. Treat.)

Q. Now, between the 15th day of May, 1907, and the 9th day of July, 1908, do you know of Ellis doing any considerable amount of development work on the property in controversy?     A. No.

Q. Did you visit the property during that time, the mining claims?     A. I don't think I did.

Q. On the 9th day of July, 1908, you made another contract with the defendant Ellis, did you?

A. Yes, sir.

Q. You and Smith on one side and Ellis on the other?     A. Yes, sir. [140—84]

Q. Under the terms of that contract there was a corporation to be formed—Do you know of your own knowledge at this time how far the formation of that corporation had progressed?

A. I know the corporation papers had been drawn up.

Q. You signed them?     A. Yes, sir.

Q. Do you remember Mr. Ellis signing them?

A. Yes, he signed them.

Q. He signed them—and Smith?

A. And Smith.

Q. What efforts, if any, did you and Mr. Smith make, after the execution of the contract on the 9th day of July, 1908, what efforts did you make to sell stock in this proposed corporation, treasury stock?

A. Well, we did what we could. The money market at that time wasn't very flush here, there wasn't very much money in circulation, but we did what we could and we got Mr. Hubbard interested, Charles G.

(Testimony of George C. Treat.)

Hubbard, took him down there to see it and tried to get him to take an option, and he took an option on it, a sixty-day option, something like that, but he failed to do anything. We also got a man by the name of Mills and took him down there. My recollection of that is that he wanted a leasing proposition and that wasn't acceptable to Mr. Ellis.

Q. Did you go down to the property with Mr. Mills and Mr. Ellis?

A. I think I did—I am sure I did.

Q. Do you remember any conversation had or any statements made by Mr. Ellis after the party reached the property as to who were entitled to inspect the property?     A. Yes.

Q. State what that conversation was. [141—85]

A. At that time there was a narrow trail on the Cliff there, it wasn't over a foot wide—I don't know that it was that wide, and a road running along the side, and we got about halfway up and Ellis was in the lead, and he stopped and said, "What business has this man got up here?"

Q. Whom was he referring to?

A. I think it was to the man that ran the boat, that is my recollection of it. He says, "He hasn't got any business here; I don't want to go on anybody else's property unless I have a right there or an interest there; I don't care to go on it, with Treat and Smith it is all right, they have an interest here and they can go along, but I don't want someone outside." Mr. Mills was with us then, he was the one



(Testimony of George C. Treat.)

we were taking down, and this other man went back and we went on up to the tunnel, a short tunnel.

Q. Did anything come of the Mills negotiations?

A. No, there was nothing came of that.

Q. Who next, if anyone, did you and Mr. Smith or either of you interest in the property?

A. The next was Mr. Crane.

Q. Just state how you came to meet Mr. Crane and get him interested in this property.

A. Bob Coles came into my cabin one night and said he had met a man named Crane, who had come up here to investigate this man working this little property out on the glacier, Mr. Haines, and found he had spent six or seven thousand dollars out there and there wasn't anything there, he didn't get anything out of it and he says, "I have been talking to him about the Cliff, but he wasn't very much interested"—it wasn't the Cliff then, it was the Ellis property, he said—and he said, "But you had better see him and have a talk with him," and I said, "I will go down; do you know him?" And he says, "Yes, I have been talking to him [142—86] quite a while," and I came down with Bob Coles and he introduced me to Crane and I told him what I knew about the Ellis property, and he says, "Would there be any way of making a deal on it?" I said, "Mr. Ellis is the big one in it and he would be the one to see," and I said, "As far as I am concerned, I would be very glad to do anything that Mr. Smith would do." He said, "Where can I find Mr. Ellis?" and I said, "I can find him," and my recollection is I went

(Testimony of George C. Treat.)

out to Ellis' house or got him, at all events I found him and brought them together and introduced him to Crane.

Q. And you left them then?

A. Yes, I left them then.

Q. On the night of the 5th day of June, 1909, or that afternoon, did you have any talk with Mr. Ellis or with Mr. Crane as to a meeting you were to have that evening?

A. Yes; my recollection is that they were to have a meeting at 4 o'clock, but for some reason they didn't meet, and there was another one at seven o'clock. Mr. Crane had used up several days and he said unless he could do something with Ellis, he was going out on the boat that night,—in fact, he was going anyway. I stepped into the Seattle Hotel and met him and he said Ellis had not been there.

Q. When was this?

A. It was a little after seven the night they went out.

Q. Did you search for Ellis—state what you did.

A. Yes, I went out and hunted around town for him and my recollection is I met him at, somewhere on Keystone Avenue, one of the side streets, anyway, and asked him if he had seen Mr. Crane and he said, "No,"—I think he said he was in there but didn't see him, and I said, "It would be a good idea to go and see him and if you don't like his proposition, you don't have to take it; go and see him anyway," and we walked along together, came down McKinley

(Testimony of George C. Treat.)

Street down to the Seattle Hotel, went upstairs together to his room, and the door was open a little—

[143—87]

Q. To Mr. Crane's room?

A. To Mr. Crane's room—he was in the act of packing his suitcase, and Mr. Ellis went in and I went out,—I didn't go into the room.

Q. Where did you go after you left there?

A. I went down to Mr. Smith's office.

Q. Did Mr. Smith come in shortly after that, into Mr. Smith's office?

A. Yes, sir, he came in a little while after.

Q. What discussion then took place between you and Mr. Smith and Mr. Ellis when he came into Smith's office?

A. Mr. Ellis came in and, as I remember, it may not be word for word, he wanted to know what we wanted out of this, or what we expected out of it—I don't know, I think he said, would we take our money back with interest or big interest, and Mr. Smith spoke up and said, "We won't; we want our 20% in the property," and there was a little discussion; I don't remember what it was.

Q. What further discussion took place there?

A. Well, we either went out of the room into the next room, or Mr. Ellis went outside, but we decided that we would take 15% during the life of the lease.

Q. Fifteen per cent of the royalties?

A. Yes, sir, for the two interests, during the life of the lease, or 20% in the property.

(Testimony of George C. Treat.)

Q. Retain 20% in the property?

A. Retain 20% in the property.

Q. You heard Mr. Smith's testimony on that point this morning? A. Yes, sir.

Q. Were you present in the room when Mr. Smith told Mr. Ellis what you and Mr. Smith had decided upon? A. Yes, sir. [144—88]

Q. What reply, if any, did Mr. Ellis make at that time? A. He said, "All right."

Q. Was the contract which is referred to in the pleadings as Plaintiffs' Exhibit "D," which was the option contract with Crane, was that made and executed that evening?

A. Yes, sir, that evening—Crane went out that night.

Q. As soon as Mr. Ellis said, "All right," Mr. Smith proceeded to have the contract drawn up?

A. Yes, the contract was drawn up then.

Q. And when the contract was completed, do you know if Mr. Ellis read it?

A. I presume he did read it; we were all there.

Q. Did Mr. Ellis remain in Mr. Smith's office while the contract was being reduced to writing, do you know? A. I can't remember about that.

Q. After the contract was reduced to writing, Mr. Crane was sent for, was he?

A. I think they all came there and signed the contract there.

Q. Mr. Ellis, Mr. Crane, yourself and Mr. Smith?

A. Yes, sir.

(Testimony of George C. Treat.)

Q. And the contract was executed and signed by all of you?     A. By all of us.

Q. You, of course, are familiar with the fact that this contract for a lease was finally assigned to Mr. Millard?     A. Yes, sir.

Q. Do you remember the execution of that contract, at the time it was executed?     A. Yes, sir.

Q. Who was present at the time that contract was executed?

A. There was Mr. Ellis, Mr. Smith, Mr. B. F. Millard and myself.

Q. What was done—what did Mr. Smith do with that lease before it was signed about advising you people who were present about the contents of the lease? [145—89]

A. Well, he passed us a copy of it; we each had a copy—Mr. Ellis and Mr. Smith retained one, Mr. Millard had one and I had one myself and have now.

Q. There were four copies of that lease made?

A. There were four copies of that lease made.

Q. After Mr. Smith passed those copies around, what did Mr. Ellis do with his copy?

A. He read it over and signed it—that is all I remember his doing.

Q. Was there any protest of any kind or nature made by Mr. Ellis at the time of signing that lease?

A. No, sir.

Q. Absolutely no protest made?

A. No, no protest made.

Q. You, of course, are familiar with the fact that



(Testimony of George C. Treat.)

on or about the 4th of August, 1909, Mr. Millard assigned this lease to the Cliff Mining Company?

A. Yes, sir.

Q. Do you now recall the fact of the Cliff Mining Company commencing operations down there on the property in controversy? A. Yes, sir.

Q. Before I progress that far—the time that you visited the property in company with Mr. Smith, Mr. Ellis and Mr. Mills that you have testified to, about how much real development work had been done on the property at that time?

A. Well, there was 20 feet, something like that.

Q. Twenty feet of development work?

A. Yes, sir.

Q. Was there a tunnel commenced to be started at the west edge, at the tide level?

A. Yes, there was a tunnel there of just a few feet.  
[146—90]

Q. Just a few feet?

A. My recollection is it was just a few feet.

Q. Where was the rest of the work?

A. The rest of the work was above, I don't know how far, 60 or 70 feet, something like that.

Q. A slight elevation?

A. Yes, sir, a slight elevation.

Q. Was that work done there in taking out this ore that was shipped to the Selby smelter?

A. Yes, I think it was taken out there.

Q. Was there any amount of ore on the dump?

A. No, my recollection is that there was a little there, but not much.

(Testimony of George C. Treat.)

Q. When did you next visit the property, if you can recall, after the Cliff Mining Company took charge of it and started in developing it?

A. I don't know that I was there.

Q. You know of the Cliff Mining Company installing a large amount of machinery, tools, equipment and buildings, on the property?      A. Yes, sir.

Q. How long did the Cliff Mining Company retain possession of the property under this lease that was assigned to them by Millard?

A. The keys were turned over to me in August, 1914.

Q. Between the 4th day of August, 1909, and some time in the summer of 1914, the Cliff Mining Company were operating this property as a mine?

A. Yes.

Q. And did they extract considerable gold from the property during that period of time?

A. Yes, sir.

Q. And you received your royalties with the other parties to the lease? [147—91-92]      A. Yes, sir.

Q. When you went down in August, 1914, and received those keys, what would be your opinion of the amount of machinery, tools and equipment and buildings that had been placed on that property by the Cliff Mining Company?

A. I couldn't place the value; I don't know about the value of them—I should think they were worth twenty-five or thirty thousand dollars.

Q. During the time that the Cliff Mining Company

(Testimony of George C. Treat.)

was operating this property, do you recall at this time various protests from time to time, signed by yourself, Mr. Ellis and Mr. Smith, directed to the Cliff Mining Company, concerning their operations?

A. Yes, sir.

Q. And you signed those protests, did you?

A. Yes, sir.

Q. Do you remember a certain expense incurred in relation to the adverse of the claim made by a corporation known as the Gold Bluff Company?

A. Yes, sir.

Q. I hand you a paper dated April 1, 1914, entitled, "Cliff Mining Company, Cash Paid Out In Re Gold Bluff Suit," and ask you if your portion was deducted from your royalty in accordance with that statement? A. Yes, sir.

Mr. DONOHOE.—We offer this statement in evidence.

It is admitted as Plaintiffs' Exhibit "I" and is a duplicate of exhibit "G," heretofore admitted and set out in full herein.

Q. In this statement how much of the expense was charged against your royalty, what percentage?

A. Ten per cent. [148—93]

Q. You also recall certain expense for Mr. Bunnell, as attorney, being deducted from your portion of the royalty? A. Yes, sir.

Q. Do you remember at this time what the total fee of Mr. Bunnell was in that matter?

A. A thousand dollars.

(Testimony of George C. Treat.)

Q. What amount was deducted from your royalty to pay your *pro rata* of Mr. Bunnell's charges as attorney?     A. Ten per cent.

Q. One hundred dollars?

A. One hundred dollars.

Q. You remember Mr. Storm making a survey of that property some time in the summer of 1910?

A. Yes, sir.

Q. You remember any amended locations being prepared to be posted on the ground after Mr. Storm had completed his survey?     A. Yes, sir.

Q. Did you or did you not sign those amended locations?     A. I signed them.

Q. Do you know what became of them?

A. Why, Mr. Smith told me he gave them to Mr. Ellis.

Q. Mr. Treat, in your contract of July 9, 1908, you agreed to release Mr. Ellis from all indebtedness that he owed you personally up to that time, as well as the indebtedness that he owed you and Mr. Smith?

A. Yes, sir.

Q. State to the Court, if you now know, how it came about that you did not satisfy the mortgage that Mr. Ellis had given you to secure the \$200 loaned him on the 15th day of December, 1905?

A. Well, I think this contract did cover that—it released him from all obligations to either one of us at that date. [149—94]

Q. Did Mr. Ellis ever demand of you that you satisfy that mortgage of record?

(Testimony of George C. Treat.)

A. No, that was our neglect not doing that—I though I had done it until a short time ago; in fact, it went out of my mind completely.

Q. When did you first learn that that mortgage was not satisfied of record? When was it called to your mind?

A. It has only been recently; I can't tell when it was—it was a short time ago.

Q. Since this suit was filed? A. Yes, sir.

Q. You make no claim against Ellis on account of that mortgage? A. No, sir, never did.

Q. And never have?

A. Never have—it has never been mentioned to my recollection between us from that time to this.

Q. Did you testify that the only demand you ever made on Ellis to repay you this \$200 was some time within a year after the loan was made?

A. Yes, sir.

Q. And after you started negotiations concerning the property in controversy you never made any demands upon him at any time for the payment of that money? A. No, sir.

Q. In the month of August, 1914, you visited this property in controversy, this mining property?

A. Yes, sir.

Q. How came you to go down to the property at that time—what was the occasion of your visit there?

A. I had a letter from Mr. Millard, who was president of the company, to Mrs. McDougall.

Q. You mean Mr. B. F. Millard, the president of



(Testimony of George C. Treat.)

the Cliff Mining Co.? [150—95]

A. Yes, B. F. Millard.

Q. What did he say he gave you?

A. He gave me a letter to Mrs. McDougall, who was watchman there for the company, the Cliff Mining Company.

Mr. GANTY.—We ask that they produce this letter.

By the COURT.—What is the purpose of this?

Mr. DONOHOE.—To show that Mr. Treat, representing himself and Mr. Smith and the other owners, took possession of the property after its relinquishment by the Cliff Mining Company about the middle of August, 1914.

The WITNESS.—About the 17th or 18th of August.

Q. And did you visit the property about that time?

A. I did and delivered the letter to Mrs. McDougall and she turned me over the keys.

Q. And what did you do with those keys on that day?

A. John Hughes was down there, had been there for some time; he told me, in the interest of Mr. Ellis, and as we walked along the beach, I said—

Q. Whom were you speaking to then?

A. To Hughes—Hughes and I were walking together; I had the keys in my hand; I said to Hughes, “You are a friend of Red’s, so am I, and we are old acquaintances, and I think I will turn the keys over to you, and you can act as watchman here for all of

(Testimony of George C. Treat.)

us," and at that time I posted some trespass notices.

Q. You posted some trespass notices?

A. Yes, sir.

Q. And what did you do with the keys?

A. I turned them over to Mr. Hughes.

Q. And you returned?

A. And I returned. [151—96]

Q. Did you visit the property after that?

A. Yes.

Q. When?

A. I don't remember; a little while, not very long after that, I was there again.

Q. Did you, along in the latter part of November or the early part of December, have a conversation with Mr. Hughes whom you left in charge as watchman?

A. Yes; I met him on the street one morning, I think it was, and we stopped and shook hands, and I said, "When did you come up?" and I think he said, as I remember, "Last night," and I asked him who was there, and he said, "Will is there mining, Mr. H. E. Ellis' brother," and I said, "When are you going back?" and he said he didn't think he would go back, and I asked him what he did with the keys and he said, "I turned the keys over to him."

Q. In that conversation was anything said about a cropping or a showing on the property higher up than where the workings had been before?

A. Yes, sir.

Q. What was said about that?

(Testimony of George C. Treat.)

A. He told me of a cropping on the hill that was very rich and he said if he could get a lease of some kind, he could take out quite a bunch of ore between that time and the spring, and I said, "As far as I concerned, that would suit me all right if it would Red."

Q. Speaking of Red, you mean Mr. Ellis?

A. Red Ellis—that was the conversation, in those words, and when Hughes was here he said, "If I knew his address I would write him." [152—97]

Q. He meant Mr. Ellis?

A. Yes, he meant Mr. Ellis, and I said, I think I can get the address of Mr. Ellis.

By the COURT.—Whom were you talking with?

A. Mr. Hughes. I got Mr. Ellis' address and I said, "I think I will write to him myself, we will both write."

Q. I hand you a copy of a letter dated December 4, 1914, addressed to H. E. Ellis, Esq., 310 Ideal Building, Denver, Colorado, and ask you if that is a copy of the letter you wrote to Mr. Ellis at this time.

A. Yes, sir, that is a copy.

Mr. DONOHOE.—We offer this letter in evidence. (Handing to Mr. Ganty.)

Mr. GANTY.—I object to the introduction of this document in evidence on the ground that it is a self-serving declaration.

Mr. DONOHOE.—The purpose of it is to later introduce a reply to this letter which came from Mr. Ellis.

(Testimony of George C. Treat.)

By the COURT.—You say there is a reply to this letter?

Mr. DONOHOE.—Yes, sir.

By the COURT.—It may go in with the reply.

Mr. GANTY.—If here is a reply, I have no objection to it.

Q. I hand you a letter dated first month, 21st day, 1915, 310 Ideal Building, Denver, Colorado, addressed to yourself and signed H. E. Ellis, and ask you if that is the reply you got to the letter I just presented to you.

A. Yes, sir, that is the letter.

Mr. DONOHOE.—We now offer in evidence the two letters.

Mr. GANTY.—We reserve the right to dispute that reply, but I don't think we will.

The letters are admitted in evidence, marked Plaintiffs' Exhibit "J," and read as follows:  
[153—98]

**Plaintiffs' Exhibit "J" [Letter, December 4, 1914,  
to H. E. Ellis].**

"Valdez, Alaska, December 4, 1914.

H. E. Ellis, Esq.,

310 Ideal Building,

Denver, Colorado.

Friend Red:

I had expected you here some time ago and for that reason I have delayed writing you about the Cliff. Your absence has tied everything up, and with the expense of watching the property piling up I feel

that in justice to us all something ought to be done to get a little revenue from the mine.

In the first place a proposition has been made to me to lease the whole property, but I won't discuss this now. There has been another proposition made to lease only that cropping near the top of the hill and on the east side of the property, above the third tunnel and adjoining the formerly disputed Iles property. With this description you will undoubtedly know the cropping I mean. The lessees will agree to work it this winter, and we all can make a little money by spring.

What do you think of this, and what do you think would be a fair lease? We can, of course, have a clause in the lease that it may be forfeited in case we wish later to lease the whole property.

I wish when you get this letter you would think the matter over very carefully and let me know your ideas about it. I can handle it if you so desire and will send me your power of attorney, with instructions as to what you think ought to be done. If you don't wish to send me the power of attorney, send it to someone else here,—anything so that we can act quickly. All the gold that is in the mine won't do us any good after we are dead.

Things are very quiet here generally, and I don't look to see them get better before late in the winter. Otherwise the town is about the same.

Trusting to hear from you soon, I remain,

Sincerely Yours,

1-21-15.



(Testimony of George C. Treat.)

**Plaintiffs' Exhibit "J" [Letter, 1-21-15, H. E. Ellis to Geo. C. Treat].**

310 Ideal Bldg., Denver, Colo.

Mr. Geo. C. Treat,  
Valdez, Alaska.

Friend George:

Yours of Dec. 4 recd. some time since and have put off answering on acc't of the unsettled nature of things, not knowing whether I would be able to go North immediately or not.

The way things are going I don't know just when I will get started. In regard to a lease I will let that wait until get north and make an examination of the property.

Sincerely yours,

H. E. ELLIS."

Q. You are familiar with Mr. Ellis' handwriting?

A. Yes, sir.

Q. And you know that that is in his handwriting?  
[154—99] A. Yes, sir.

Q. When did you first learn that Mr. Ellis was disputing your right to a ten per cent interest in the property in controversy in this action?

A. When Mr. Hughes went to work down there.

Q. What time, about, was that?

A. Well, it would be near the time of the date of this letter, as near as I can place it.

Q. Some time early in 1915? A. Yes.

Q. What did you learn about Mr. Hughes going to work there? What do you mean by him going to work?

(Testimony of George C. Treat.)

A. I learned he had got a letter from Mr. Ellis—I never saw the letter and don't know what it contained,—outlining a proposition for him to go down there and go to work on this cropping.

Q. You understand that Mr. Ellis gave Mr. Hughes a lease?

A. That is what I understand.

Q. And you were not consulted as to the terms of that lease?      A. No.

Q. Now, was there any time previous to that, by either word or act, that Mr. Ellis ever disputed your right to a ten per cent interest in that property, after the execution of the Crane contract on the 5th day of June, 1909?      A. Never at any time.

Mr. DONOHUE.—That's all [155—100]

Cross-examination by Mr. GANTY.

Q. Have you very often asserted your ownership of a ten per cent interest in that property since the execution of that Crane lease?

A. Quite a good many times.

Q. Whom to?

A. I don't know, several people.

Q. Have you ever asserted it to Mr. Ellis?

A. I don't think it ever came up between us.

Q. At the time the contract to incorporate the property owned by Mr. Ellis was made and entered into between yourself and Mr. Smith and Mr. Ellis, what interest did you claim in the property at that time?

By the COURT.—What time is this?

(Testimony of George C. Treat.)

Mr. GANTY.—At the time the agreement to incorporate was entered into.

The WITNESS.—Up to the time the incorporation papers were drawn?

Q. At that time, at the time of the execution of the incorporation what interest did you claim?

A. That was when we got the interest, right then, when the incorporation papers were drawn.

Q. What interest did you have prior to that?

A. We had the interest of the money we put up.

Q. Did you acquire any further interest in this property beyond that you acquired under the agreement to incorporate?     A. No.

Q. For what reason did you decide to take 15% of the royalty under the option lease to Crane?

A. For this reason—this Mr. Crane was the only man that we had come across that looked likely to go through with a proposition [156—101] of that kind, and had the money to do it, said he had, and we were both anxious to get the proposition through,—that was the reason why. Mr. Ellis thought that the interest of 20%, ten each, was too much; that was the reason we dropped to 15 during the life of the lease.

Q. You considered yourself then as the real owner of a tenth interest in the property, did you?

A. Yes, sir.

Q. What had you done to acquire that tenth ownership?     A. Advanced this money.

Q. That was your reason?

A. That was enough, wasn't it?

(Testimony of George C. Treat.)

Q. Did you at that time, at the time that the option of lease to Crane was entered into, represent to Mr. Ellis that you were entitled to a 20% interest in his property, that is, yourself and Mr. Smith?

A. At the time of the Crane contract and option?

Q. Yes.      A. Yes.

Q. And at that time you agreed, did you, with Mr. Ellis, that you were to receive 15% of the royalties paid under this option of lease?

A. Yes, sir, during the life of the lease.

Q. And you say that Mr. Ellis agreed to it?

A. He did.

Q. I think that you testified that just prior to this arrangement having been made between yourself and Mr. Ellis that he came to you and asked you what you would take in settlement of your [157—102] claims against the property, or your interest, or the money advanced or something?

A. He asked us if we would take our money back with interest, good interest; we told him no, we would not do it, we had brought it up to a point where we had found a man who was willing to take an interest in it, or all of it, and then to take our money back, we told him we wouldn't do it.

Q. He denied your interest in the property at that time, did he not?      A. No, no denial.

Q. Didn't he say it was too much?

A. The 20% he said was too much and that is why it was dropped to 15 during the life of the lease, but we still retained that 20% in the property.

Q. What did you do, aside from endeavoring to sell

(Testimony of George C. Treat.)

the treasury stock of this corporation, towards earning a fifth interest in that property?

Mr. DONOHOE.—We object to that as irrelevant—the contract speaks for itself.

By the COURT.—He said a good many times he advanced this money. 'Objection sustained—defendant allowed an exception.

Q. At the time of signing this agreement to incorporate then, you did not, in fact, release Mr. Ellis from this contract and mortgage for \$500, did you?

A. No, except in that contract—I considered that squared everything between us—I did fail, to cancel the mortgage in pure neglect, forgot it—I considered the amount paid, however.

Q. You verified this complaint, did you not, Mr. Treat?     A. I think so.

Q. You swore to the facts in the complaint?

A. Yes, sir.

Q. It states in paragraph 6 of the complaint, as follows: [158—103]

“That on the execution of the contract last set out, plaintiffs Treat and Smith did release defendant from and receipt to him in full for said sum of Five Hundred Dollars, and plaintiff Treat surrendered and delivered said promissory note to defendant and released him from all obligation thereon. Is that correct?

A. No, that is not correct, but the way you refer to the note there I presume the mortgage speaks of a certain promissory note of even date and I take it for granted there was a note given—but I am quite



(Testimony of George C. Treat.)

sure there was not, since thinking it over; the mortgage was given, but the note I am very much in doubt of.

Q. About what date was it, if you remember, when you first met Mr. Crane?

A. I met Mr. Crane perhaps three or four days prior to the drawing of this option contract, somewhere about that time, a few days before.

Q. Where is Bob Coles now, if you know?

A. I don't know.

Q. You say he introduced you to Mr. Crane?

A. He did.

Q. Whereabouts was that?      A. In Valdez.

Q. And then you took Mr. Crane, you say, to Mr. Ellis?      A. No, I took Mr. Ellis to Mr. Crane.

Q. You went and hunted up Ellis?      A. Yes, sir.

Q. Where did you introduce them?

A. If you want the exact spot, I don't know that I can tell you—here in town, Valdez; my recollection is that it was on the postoffice corner, but I am not sure of that—I stood there talking with him, but it might have been in the hotel; I can't remember just where it was. [159—104]

Q. And after that you had several conversations with Mr. Ellis and Mr. Smith regarding the option of lease?      A. Yes, sir.

Q. Did Mr. Crane go down to see this property before he entered into negotiations with you for the lease?      A. Yes, sir.

Q. Did you go with him?

A. I think I did, but I am not positive; I remember

(Testimony of George C. Treat.)

his asking me if Mr. Ellis would be willing for him to go to the property and my recollection is I told him I would go with him and my recollection is I went down with him and also a man he had with him, his name I don't remember.

Q. Do you remember the conversation you had with Mr. Mills down at the mine at the time Mr. Mills went down there, can you remember the words said by the parties down there? A. Yes, sir.

Q. When did you go down there with Mr. Mills?

A. I can't remember.

Q. About what year?

A. It was 1908, I should think, somewhere there, I don't remember—it was in the summer.

Q. You can't even be positive whether you went down with Mr. Crane or not?

A. I am positive, I am quite sure I went down with both of them—I know I went down with Mr. Mills.

Q. You are absolutely certain you went down with Mr. Crane?

A. I say I am not positive I went with Mr. Crane, but I think I did.

Q. How long was it after you first introduced Mr. Crane to Mr. Ellis that he went down there and you think you might have accompanied him? [160—105]

A. My recollection is they went down the next day after they met.

Q. And how long after that was it that Mr. Ellis came and asked you and Mr. Smith what you expected out of this?

(Testimony of George C. Treat.)

A. I can't remember, perhaps two days, something like that—I don't remember the time.

Q. That is the day when you said, we want 20% in the property?

A. That is the day—it was the night—it was after the meeting at seven o'clock; it was during that evening, the same night that Crane went out; that is my recollection of it.

Q. Now, you stated that you went down to the Cliff some time in August, 1914—can you locate the date with any exactness?

A. Either the 17th or 18th.

Q. How did you come to go down there at that time?

A. I went down there after I got a letter from Mr. B. F. Millard for the delivery of the keys from Mrs. McDougall to myself—that is what I went down there for, to put a watchman in charge.

Q. Who did you find at the property at that time?

A. Mrs. McDougall and Mr. Hughes.

Q. And you got the keys from Mrs. McDougall?

A. Yes, sir.

Q. Did she hand them to you?

A. She gave them to me, yes. Put them in my hand, do you mean? I remember now the little house she was living in was near the shore and above it was a log; my recollection is she laid them on that.

Q. And you state you turned them over to Mr. Hughes? A. Yes, sir.

Q. Did you pay Mr. Hughes for his services down there? A. I did not.

(Testimony of George C. Treat.)

Q. Did he ever agree to accept payment from you?

A. I told Mr. Hughes when I turned the keys over to him that I would be responsible for the wages there. I asked him if there was anything he needed in the way of provisions, etc., and he said he did not and I gave him the keys. [161—106—108]

Q. You have never paid him, have you, since then?

A. Never paid him.

Q. Has he ever asked you to pay him?

A. Never has.

Q. Did he ever tell, either at that time or within a few days thereafter, that he was there representing Mr. Ellis and no one else, the defendant here?

A. He told me he was down there for Mr. Ellis; he told me that he was down there, not watching the property but that he was down on the property. The property was then—

Q. I asked you if he ever told you that he was representing Mr. Ellis and holding it for Mr. Ellis alone?

A. No, he said he was down there representing Mr. Ellis.

Q. Did you ever get a letter from him, stating he was down there representing Mr. Ellis?

A. I never have.

Q. You went down there to get some steel shortly after this episode of the turning over of the keys to you? A. Yes, sir.

Q. Did you get the steel? A. I did not.

Q. Who was this Will Ellis you speak about?

A. Why, he said he was Mr. H. E. Ellis' brother.

(Testimony of George C. Treat.)

Q. Did you know him to be Mr. Ellis' agent?

A. I did not.

Q. Did he ever represent himself as such to you?

A. Not as I know of—I had very little talk with him anyway. I saw very little of him; we rode up from the mine one night.

Q. Was that the time you took some notices down there to Mr. Ellis?

A. No, I think that was after.

Q. You did take some notices down there at one time? A. Some trespass notices?

Q. Yes. [162—109]

A. Yes, I took them down at the time I had the letter for the delivery of the keys.

Q. You asked Mr. Will Ellis to sign his brother's name to them, did you not?

A. I did not. I signed them and Archibald signed them and I asked Mr. Hughes to ask Mr. Will Ellis or tell Mr. Will Ellis that he ought to sign them for his brother.

Q. How did you come to ask that he sign, or ask Mr. Hughes to get Mr. Ellis' brother to sign his name thereto, if you did not consider he was an agent of Mr. Ellis?

A. Out of courtesy, nothing else—I didn't care whether he signed them or not, as far as I was concerned.

(By Mr. DONOHOE.)

Q. Mr. Treat, during that time that the Cliff Mining Company were operating this property, you from



(Testimony of George C. Treat.)

time to time received settlement statements, from them, did you not, embodying your royalty?

A. Yes, sir.

Q. And in those statements received from time to time there were sometimes expenses chargeable against your proportion of the royalty?

A. Yes, sir.

Q. I hand you a paper entitled, George C. Treat in account with the Cliff Mining Company and ask you if you received this as part of your settlement statement of February, 1914? A. Yes, sir.

Mr. DONOHOE.—We offer this in evidence.

It is admitted, without objection, marked Plaintiffs' Exhibit "K," and reads as follows: [163—110-111-112]

**Plaintiffs' Exhibit "K" [Statement—George C. Treat with Cliff Mining Co.].**

George C. Treat  
in Account With  
Cliff Mining Company.

To 10% of cost of patent		
Expense .....	34.11	By Feb. Royalty.. 313.35
To 10% of cost of Gold		
Bluff suit .....	100.00	
Check to balance account .....	179.24	
	<hr/>	<hr/>
	\$313.35	\$313.35

(By Mr. GANTY.)

Q. In this statement, which you say was handed to you, that is regarding a charge for patenting the Cliff mine, is it?

A. In the adverse suit, the Gold Bluff suit, it was \$100 I think also.

(Testimony of George C. Treat.)

Q. When did you get that statement?

A. Why, I don't remember when I got it,—I can find out the date of it, but I don't remember. I don't remember the date, I would have to refer to the statement to find out.

Q. Your statement of royalties would be I suppose a month after the royalties accrued?

A. Yes.

Q. The month after the royalties run?

A. Yes, sir.

Q. Did you get a big lot of these statements, similar to these, all together at one time?

A. At this particular time?

Q. When you got this statement here, introduced in evidence.

A. Yes, I think there were two or three.

Q. How many months did they cover?

A. I don't know, they are all right there.

Q. Did you ever make any protest against paying this ten per cent? This 10% of the cost of the Gold Bluff suit? A. No, sir.

Q. Did Mr. Ellis ever request you to pay it?

A. No. [164—113]

Q. Did you think you ought to pay it?

A. I don't see why I shouldn't.

Q. You don't agree with Mr. Smith then in the idea that the Cliff Mining Company should pay the costs of this adverse under the terms of their lease?

A. Yes, I do.

Q. And yet you paid it, without protest, this \$100?

A. Yes, sir.

(Testimony of George C. Treat.)

Q. Is it not a fact that you paid it so as to establish a cause of title to this property?

A. Never entered my mind.

Q. You didn't realize at the time that it might be evidence in your case?      A. No, sir.

Q. Did you pay it in cash?

A. It was taken out of the royalty, out of my royalty.

Q. Did Mr. Ellis ask you to pay that percentage of the patent proceedings charged here in this statement?

A. Mr. Ellis never asked me to pay anything.

Q. Do you know whether he knows or not that you ever paid any of this?      A. I don't know.

Q. Are you a stockholder in the Cliff Mining Company?      A. Yes, sir.

Q. Are you an officer and director of that company?      A. No, sir.

Witness excused.

**[Testimony of Charles Kraemer, for Plaintiffs.]**

CHARLES KRAEMER, called and sworn as a witness in behalf of the plaintiffs, testified as follows: **[165—114—115]**

Direct Examination by Mr. DONOHOE.

Q. Are you acquainted with the Cliff Mining Company?      A. Yes, sir, I am.

Q. Did you for some time occupy the position of bookkeeper for the Cliff Mining Company?

A. Yes, sir, I did.

Q. You were secretary of the corporation?

(Testimony of Charles Kraemer.)

A. Yes, sir.

Q. Did you have the duty of preparing statement sheets with the owners of the Cliff mine and apportioning their royalties?      A. Yes, sir.

Q. Are you acquainted with Mr. Will Ellis?

A. Yes.

Q. A brother of H. E. Ellis?      A. Yes, sir.

Q. Do you know if during the year 1914, Mr. Will Ellis was the agent of Mr. H. E. Ellis in connection with the Cliff Mining Company?

A. I didn't know it for sure until I received a wire from Mr. Ellis.

Q. State how you came to receive that wire from Mr. H. E. Ellis.

A. Well, Mr. Will Ellis came in and demanded the royalty and I asked him if he had a power of attorney or was agent for Mr. Ellis; he said, no, only he was supposed to be, was known as his brother's agent. I explained the matter to him and told him I couldn't pay out the money to him without an order from Mr. Ellis. Evidently he wired or the bank wired because Mr. Ellis sent a wire to me or to the Cliff Mining Company.

Q. Authorizing you to pay the money to Mr. Will Ellis?      A. Yes, sir.

Q. I hand you a paper that has been introduced in evidence as Plaintiffs' Exhibit "I," which has the heading on it—Cliff Mining Company, Cash Paid out in re Gold Bluff suit, April 1st, 1914, and on the bottom there is noted on it, George C. [166—116] Treat, and ask you if you prepared that statement?

(Testimony of Charles Kraemer.)

A. Yes, I did.

Q. Is that a statement you prepared for Mr. Treat?     A. Yes, sir.

Q. Was the statement prepared for Mr. H. E. Ellis a duplicate of this statement?

A. There were five copies made of that statement.

Q. And what did you do with the statement that you prepared for Mr. H. E. Ellis?

A. Mr. Will Ellis took the statement.

Q. You delivered it to him personally?     A. Yes.

Q. Was there at that time anything said by Mr. Will Ellis as to charging a portion of the expense as recited in that exhibit against Mr. Treat and Mr. Smith and Mr. Archibald?

A. I don't think there was; I don't think there was anything said about it at all.

Q. Did you in your experience as secretary of the Cliff Mining Company and as its bookkeeper, ever, at any time, receive any information from Mr. H. E. Ellis that such expense as recited in Plaintiffs' Exhibit "I" should be charged to him alone and not to Mr. Treat and Mr. Smith and Mr. Archibald?

A. No, I don't recollect of any.

Q. If such a statement had been made to you, you would be apt to recollect it?

A. Yes, I would have had to take it up before the board of directors.

Q. You are familiar with the transaction of Mr. Smith where he sold half his interest to Mr. Archibald, you heard of that, did you not?



(Testimony of Charles Kraemer.)

A. Yes, sir. [167—117]

Q. Did you on or about the time that transaction took place have a conversation with Mr. H. E. Ellis in which you enquired as to the ownership of the Cliff mining property? A. Yes, I did.

Q. State that conversation as near as you can recollect it at this time?

A. I think it was about the time that Mr. Archibald came back from Seattle and told me of having bought a half interest from Mr. Smith, half of Mr. Smith's interest, and in some way, I don't know how, Archie told me at that time that Mr. Smith couldn't give him a deed for the property, as they had no deed from Mr. Ellis to him. Anyway, I think I myself afterwards asked Mr. Ellis if they had an interest in the property and all Mr. Ellis said at the time was, the records don't show anything, do they, and nothing more was said about it at that time.

Mr. DONOHOE.—That's all.

Cross-examination by Mr. GANTY.

(By the COURT.)

Q. Do you know of these statements being given to Mr. Ellis personally, to Mr. Ellis himself, Mr. H. E. Ellis, showing wherein he was charged 80% of certain expense or items in the account of the Cliff Mining Company with him and which was deducted from his royalty?

A. Only the same statements that the other ones received which I made a copy of.

Q. Did he get such statements from time to time

(Testimony of Charles Kraemer.)

during the runing of this lease, while you were secretary?

A. Yes, sir, everything was deducted from his royalty.

Q. That is the expense would be charged to the owners as against the [168—118] royalty, when he would be charged 80% of that?

A. Yes, sir—that is, all the items that came up that were to be charged to the owners, he received the same statement as the rest of them did.

(By Mr. GANTY.)

Q. (Continued.) Do you understand that that statement of April 1st, 1914, was handed to Mr. Ellis personally?

A. Not personally but to Mr. Will Ellis.

Q. Did you say there were others in which that proportion of ownership was shown of 80%?

A. I don't know how many there would be without looking at the books, but if there were any charges against the owners, they were always made out 80 and 20.

Q. You are not making any declaration that there were any others outside of this one here?

A. No, sir.

Q. Is it not a fact that there are no others?

A. That is all I can recollect at the present time of those charges.

Q. Do you know to whom Mr. Ellis's copy of this particular statement was handed?

A. Well, Mr. Ellis was out at that time and I am quite certain it was handed to Will, but I am not

(Testimony of Charles Kraemer.)

sure about that either, because I went inside the latter part of May of this season, this year, and I don't know whether this was held in the office until after I left or not.

Q. But it is a fact that during Mr. H. E. Ellis' absence from Valdez, the Cliff Mining Company has recognized Mr. Will Ellis as his agent here in matters pertaining to the Cliff Company, is it not?

A. Yes, sir. [169—119—120]

(By the COURT.)

Q. There were certain protests filed, signed by Ellis, Treat and Smith, against certain charges made by the Cliff Mining Company—were they made while you were secretary? A. Yes, sir.

Q. Were those items which were protested against, were they divided up in this manner, 80% and 10% and 10%?

A. No, they were taken in in the mining and milling account, they had nothing to do with the ownership—the way I figured out this lawsuit—

Q. That came out of the royalty as an advance?

A. Yes, sir.

Q. It wasn't a question of a division of the royalties?

A. No, the way we figured, the board of directors of this company had nothing to do with the division of the charges between the owners, and that is the reason I made the charges 80 and 20%.

(By Mr. GANTY.)

Q. (Continuing.) Were those charges made at the request of Mr. Ellis? A. No.

(Testimony of Charles Kraemer.)

Q. Did Mr. Ellis ever request you or any other officer of the Cliff Mining Company to charge up Treat and Smith with any portion of these charges?

A. No, he did not.

Q. Then who determined this proportion?

A. The board of directors of the Cliff Mining Company.

Q. Is it not a fact that Mr. Ellis has protested against paying this attorney's fee to Mr. Bunnell at all?

A. He did not do it while I was there—it might have been done when I was inside last summer; I was inside during the month of June, July and part of August.

Q. Who was in charge of the Company's affairs when you were inside? [170—121]

A. Frank Millard was keeping the books.

Q. What other officers of the company were in town at the time you left to go inside?

A. Mr. Millard was in town and Mr. Archibald.

Q. (By the COURT.) Were those books destroyed by fire? A. No.

Q. (By the COURT.) Was the correspondence of the company destroyed by fire?

A. Yes, all the letters were burned up—there is nothing but the vouchers and letter-book.

By the COURT.—Who has charge of the books now?

Mr. DONOHOE.—I imagine Mr. Martin has them in his custody.

(Testimony of Charles Kraemer.)

The WITNESS.—Yes, they are in Mr. Martin's custody.

By the COURT.—I would like to have the books showing these various statements and dealings with Mr. Ellis and Mr. Treat and Mr. Smith.

Adjourned until ten o'clock to-morrow (Wednesday) morning.

Wednesday, October 6, 1915.

MORNING SESSION.

Mr. DONOHE.—I will state that we have here the books of the Cliff Mining Company.

By the COURT.—Inasmuch as the question was raised here about the defendant Ellis not having notice of this statement of April 1st, 1914, wherein it is shown that he was charged 80% of certain expense by reason of his supposed ownership and the plaintiffs, Treat 10%, Smith 5% and Archibald 5%, and inasmuch as that point seems to have been rather emphasized, I want to see if there is anything in these books that will clear that up and show whether there were any such statements made.

Mr. DONOHOE.—If the defendants care to examine the books, we have [171—122—125] them here—we will look through the books carefully.

Mr. GANTY.—I thought we might ask Mr. Kraemer to point out such entries, if he knows of any.

By the COURT.—You might look them over during the noon recess.

Mr. GANTY.—Then we will recall Mr. Kreamer later for further cross-examination.

Mr. DONOHOE.—We will call Mr. B. F. Millard.



[**Testimony of B. F. Millard, for Plaintiffs.**]

B. F. MILLARD, a witness called and sworn in behalf of the plaintiffs, testified as follows:

Direct Examination by Mr. DONOHOE.

Q. How long have you resided in and about Valdez?     A. Seventeen years.

Q. What has been your occupation during your residence here?     A. Prospecting and mining.

Q. You are acquainted with Mr. Edmund Smith, Mr. Treat and Mr. Archibald, plaintiffs in this case?

A. Yes, sir.

Q. And Mr. H. E. Ellis?     A. Yes, sir.

Q. You were president and manager of the Cliff Mining Company during its existence or the greater portion of it?     A. Yes, sir.

Q. Were you acquainted with one A. J. Crane who took an option on the property in controversy along in June, 1909—took an option for a lease?

A. Yes, sir.

Q. Did you afterwards succeed to the rights of Mr. Crane in that lease?     A. Yes, sir, I did.

Q. What did you pay Mr. Crane for that lease?

A. Four hundred dollars. [172—126]

Q. Now, on July 23, 1909, as assignee of that Crane option, you entered into a full lease with certain parties, Mr. Ellis, Mr. Smith and Mr. Treat, for the property in controversy, did you not?

A. I entered into a contract of lease, yes, sir.

Q. That lease was executed, was it not, in Mr. Smith's law office in the town of Valdez?

A. Yes, sir.

(Testimony of B. F. Millard.)

Q. Do you know who was present at the time that lease was executed?

A. All of the parties to the lease.

Q. State if Mr. Ellis at that time, upon the execution of this lease, made any protest or objections against executing the lease as it was?

A. I don't remember of any such.

Q. Had he made any protest openly you would have been apt to have heard of it, would you not?

A. I presume so.

Q. When you took over possession of the property in controversy under this lease of July 23, 1909, what development work was done upon the property at that time?

A. Well, at what we call the sea level, it was fairly well faced up, just about facing up the tunnel.

Q. How much underground was it, would you say?

A. Very little underground, to my recollection.

Q. A foot or so?

A. Probably a couple of feet, or such a matter.

Q. The next level, what was there?

A. About that there was a tunnel 12 or 14 ft. in, boarded up in front and blocked up.

Q. At the time you took it over, did you sample and assay the depth of the tunnel? A. Yes, sir.

Q. What results did you get, in gold?

A. Seven dollars a ton. [173—127]

Q. That was about all the development work that had been done on the property at the time you took it over?

(Testimony of B. F. Millard.)

A. Well, there was a trail leading up to the property.

Q. That was all the underground mining work that was done? A. Yes, sir.

Q. During the time that the Cliff Mining Company was in possession of this property, operating it under this lease, do you recall certain expenses paid by the Cliff Mining Company off and on, for and on account of the lessors, in connection with a suit known as the Gold Bluff suit and adverse?

A. I recall the argument whereby we paid the expense.

Q. I hand you the statement here, marked Plaintiff's Exhibit "I," which shows these charges charged against the lessors, 80% to H. E. Ellis, 10% to George C. Treat, 5% to Edmund Smith and 5% to Logan Archibald and ask you if those charges were made in accordance with instructions received from Mr. Ellis?

Mr. GANTY.—I offer the same objection—we have the books here.

By the COURT.—If it is not correct, you may show it by the books.

A. As I understand it, this is correct.

Q. Do you recall Mr. Ellis, at a meeting of some of the officers of the Cliff Mining Company, instructing those charges to be made and deducted from the royalty?

A. As I understand it, Mr. Ellis instructed us to go ahead and defend the property and charge it against the royalties.

(Testimony of B. F. Millard.)

Q. What was the value of the machinery, tools, buildings and equipment left upon the property when the Cliff Mining Company surrendered possession of it to the lessors?

A. That would depend largely upon what you wanted to do with it. If there are values in the property and you want the mill and machinery and tools where they are, they are worth \$35,000, the entire equipment of the property, but if you had to remove [174—128] it, it would be a different proposition.

Mr. DONOHOE.—That will be all.

Cross-examination by Mr. GANTY.

Q. You were asked by Mr. Donohoe something concerning a protest, whether it was made by Mr. Ellis at the time this lease was signed between yourself and the parties to this action for the Cliff Mine—I would ask you who was present at the time the lease was signed?

A. Why, if I recollect right, all the parties were present.

Q. Did you all get there together?

A. I couldn't say we all went in at the same time.

Q. You don't remember that?

A. I don't remember that, if we all went in at the same time, no.

Q. Do you remember whether you were there first or got there last?

A. I don't remember whether I was there first or got there intermediate.

Q. You don't know whether there was any con-

(Testimony of B. F. Millard.)

versation between the other parties about signing before you arrived and became one of the party?

A. I don't know anything about the private affairs of the other gentlemen.

Q. Then a protest might have been made by Mr. Ellis to this lease and you know nothing about it?

A. It might have been made privately, certainly.

Q. And when you stated that if any had been made, you would have known about it, you mean after you arrived there?

A. I think I made the statement, not to my knowledge—I don't remember any such statement or any such protest.

Q. Did you state you could recall the agreement by which you were to pay these expenses of fighting the protest suit, the Gold Bluff adverse suit?

A. The protest and patenting and surveying of the property. [175—129]

Q. That is what you call the patent proceedings?

A. There were two suits—one was a suit for an interest or adverse and another that would naturally come in as against the patent.

Q. Who was present when this arrangement was made with Mr. Ellis that you spoke about?

A. Mr. Lathrop and myself.

Q. Where was it made?

A. In Mr. Lathrop's office.

Q. And can you remember the exact agreement?

A. Why, as I remember it, the agreement was that we should go ahead and defend the property against the adverse, proceed to patent and agree upon an



(Testimony of B. F. Millard.)

attorney, and charge the expense of patenting and defense up to the royalties.

Q. That was an oral agreement, was it?

A. That was an oral agreement.

Q. Did Mr. Ellis ever repudiate that understanding?  
A. Not to me.

Q. To your knowledge?  
A. No, sir.

Q. Have you ever heard it mentioned among any of the directors of the Cliff Mining Company that he refuses to acknowledge any such understanding?

A. I don't remember it ever coming up in a meeting.

Q. Did you ever hear of it coming up at all?

A. I have—I have heard since that he hadn't repudiated it, but didn't want to pay it.

Q. He denies that there was such a contract, doesn't he?

A. Not to my knowledge, he does not.

Q. He simply refuses to pay, is that the idea?

A. As I understand it, he refused to pay it. [176—130]

Q. How long since you have so understood it?

A. I don't remember how long it is.

Q. Aren't you aware, as president of the Cliff Mining Company, that Mr. Ellis maintains that the Cliff Mining Company should defend and pay the costs of defending the ground against all trespass and encroachments under the lease?

A. Not by any means—I never understood any such thing, we absolutely refused to do it.

Q. But Mr. Ellis made that contention, didn't he?

(Testimony of B. F. Millard.)

A. Mr. Ellis wanted us to do it and we refused, when he gave us authority to do it on his account.

Q. Then you admit now that Mr. Ellis did require you—or take that stand, that the Cliff Mining Company should pay these adverse costs?

A. Mr. Ellis tried to get the Cliff Mining Company to do it, which they refused to do. It was none of our interests whatever, we didn't care whether it was defended or not, it didn't affect our ground that we were working.

Q. That was your contention?

A. That was our contention.

Q. But Mr. Ellis, of course, claimed that under the terms of the lease by which you held the ground, you were bound to defend it?

A. He didn't mention the terms of the lease—he simply wanted us to do it.

Q. Did he have any reason at all?

A. I don't know what his reasons were.

Q. You don't remember this lease question being brought up at all at that time?

A. Not in the presence of Mr. Ellis.

Q. Was it brought up by any of the directors of the company? [177—131]

I don't know as I am entitled to tell all the secrets of the company.

Mr. GANTY.—I think you testified that to your knowledge it had not been brought up—I will leave it to the Court whether you have to answer or not.

By the COURT.—You may answer the question.

The WITNESS.—We discussed it.

(Testimony of B. F. Millard.)

Q. Did you discuss that feature of the lease, as applied to your having to defend the premises against this adverse suit?

A. Yes, sir, we did, and got advice on it.

Q. You got advice on it?      A. Yes, sir.

Q. And it was on that advice—

A. It was on that advice that we took the ground that he had nothing to do whatever with defending a lawsuit against it.

Q. Then it is a fact, is it not, that you got that advice because Mr. Ellis made the claim that you should defend it at your expense?      A. Certainly.

Q. Did you get that advice before or after you had this agreement with Mr. Ellis about charging it up to the royalties?

A. I have forgotten just when we did get it.

Q. Did you ever notify Mr. Ellis personally as to how much had been charged up against him on account of this adverse suit?

A. I never notified Mr. Ellis on anything—I had nothing to do with that branch of the business.

Q. Did you ever instruct any officer of the company to do so?      A. Personally, no.

Q. Do you know of your own knowledge that it was done?

A. I know the board instructed him to do it.

Q. Instructed who?      [178—132]

A. Mr. Kraemer, the secretary, the acting secretary.

Q. When was he so instructed, if you remember?

A. I can't remember just exactly when—at the

(Testimony of B. F. Millard.)

time this controversy was up.

Q. On what date did the Cliff Mining Company give up these premises?

A. If I remember correctly I signed a notice that we would abandon the property and give it up on the 15th day of August, last year; that is my recollection. The books will show that.

Q. They were sent to everybody that was interested, Mr. Treat, Mr. Archibald, Mr. Ellis, if we knew his address—I am not positive whether we did or not; I never knew it, but we tried in every way to reach him by registered mail, I think.

Witness excused.

**[Testimony of J. R. Crittenden, for Plaintiffs.]**

J. R. CRITTENDEN, a witness called and sworn in behalf of the plaintiffs, testified as follows:

Direct Examination by Mr. DONOHOE.

(The testimony of this witness is reduced to the following recital:) I am acquainted with Edmund Smith, one of the plaintiffs in this action and also with defendant H. E. Ellis. Some time in the end of June or beginning of July, 1909, I had occasion to call at the office of Mr. Edmund Smith and found both Mr. Smith and Mr. Ellis there. Referring to the rumor of a lease of the Cliff property to Mr. Crane or Mr. Millard, I congratulated Red—that is Mr. Ellis—in these words: “You are all right Red, if you haven’t too many partners.” To which Mr. Ellis replied, “I haven’t but two partners, Mr. Smith and Mr. Treat.” Mr. Smith then said: “Red is on the road now to be the wealthiest man of Valdez”;

(Testimony of J. R. Crittenden.)

to which Mr. Ellis responded, "You will do pretty well with your tenth, if I do pretty well with what I have got." I am not sure of the exact words used but that is the substance of them.

Witness excused. [179—133—136]

**[Testimony of Logan Archibald, for Plaintiffs.]**

LOGAN ARCHIBALD, a witness called and sworn on behalf of the plaintiffs, testified as follows:

Direct Examination by Mr. DONOHOE.

Q. What is your name? A. Logan Archibald.

Q. Where do you reside?

A. Valdez, most of the time.

Q. How long have you lived in Valdez?

A. Since 1903, more or less.

Q. Are you one of the plaintiffs in this case?

A. Yes, I believe I am.

Q. You are claiming a 5% interest in what is known as the Cliff property? A. Yes, sir.

Q. When did you buy that?

A. Why, I think it is three years this fall, is it not, Judge? Or two. (Witness addresses Mr. Edmund Smith, as Judge.)

Mr. DONOHOE.—You will have to testify of your own recollection.

A. It is two or three years, I am not sure—I didn't look it up; two years last fall.

Q. From whom did you buy that?

A. Edmund Smith.

Q. Where did the transaction take place?

A. In Seattle.

Q. You have a deed for that, have you?



(Testimony of Logan Archibald.)

A. Yes, sir.

Q. Did you make any examination of the title or have it made for you?

A. I had the lease examined and the lawyer that passed on the lease told me he thought it was absolutely good.

Q. Does that lease show whether or not it was of record at that time?      A. The lease of record?

Q. Yes. [180—137]

A. Yes—I had a copy of the lease, not the lease that had been recorded.

Q. Did you ever talk to Mr. Ellis about the title to this property when you were in Valdez, prior to purchasing this interest?      A. I never have.

Q. You had no knowledge of the title except what the record shows?      A. What the lease showed.

Q. And based on that lease and the fact that it was of record, you made the purchase?

A. Based on the lease and the advice from my lawyer, yes.

(By Mr. GANTY.)

Q. At the time you were asked if you were one of the plaintiffs in this case you said I believe I am—what do you mean by qualifying that?

A. Well, I had a warranty deed to that and he was to protect the title, if there was any question about the title. He was to protect my title and the interest.

Q. He was to protect your title and the interest?

A. Yes, sir.

Q. Who was the attorney that examined it?

A. Judge Reed—he was in Seattle at the time.

(Testimony of Logan Archibald.)

Q. What did he examine, the title?

A. He examined the lease.

Q. He examined the lease and on examining the lease told you the title was perfectly good?

A. If I remember right that is what he told me—he said, if Ellis owns 80% and they don't own the other 20%, who does own the other 20, Ellis claiming to own only 80%.

Q. That is the way he talked to you about it?

A. Yes, sir. [181—138]

Q. Did you ever talk to Mr. Ellis about this purchase of yours since you made it?

A. Never, before or since.

Q. Did you notify Mr. Ellis that you had purchased an interest from Mr. Smith in this property?

A. I never did.

Q. Why didn't you?

Mr. RITCHIE.—We object to that as irrelevant.

Objection sustained—Defendant allowed an exception.

Q. You stated something about a guaranty of the interest, what was that?

A. It wasn't a guaranty, it was a warranty deed, protecting against everything and against the government, that is, if anything was to come up, he was to protect me against it, just like a warranty deed for anything else.

Witness excused.

**Statement of Mr. Donohoe Re Amendment to  
Complaint.**

By Mr. DONOHOE.—It is plaintiffs' desire to move to amend their complaint to conform with the proof. There is a divergence between the proof and the complaint. We desire to amend paragraph 6 as shown on page 6, commencing on the eleventh line from the bottom of that paragraph with the word "hold" and ending with the word "and" on the tenth line from the bottom. The part we desire to strike out is as follows:

"hold said contract of July 9, 1908, in abeyance and"

And in the same paragraph we desire to strike out all that part of the paragraph commencing on the 8th line from the bottom, after the word "Crane" to the end of the paragraph, reading as follows: [182—139-140]

"At which time defendant specifically agreed verbally to and with plaintiffs Treat and Smith that at the termination of said lease he would join Treat and Smith in forming the corporation as provided in said contract of July 9, 1908, and would carry out all of the terms of said contract to be performed by him thereunder, or, that he, defendant, would deed to each of plaintiffs Treat and Smith an undivided one-tenth interest in and to each and all of said mining claims."

We also desire to amend paragraph 13 by striking therefrom, on the third line from the top of the paragraph, after the letter "C," down to and including

the word "but" on the seventh line from the top of said paragraph, the part to be stricken reading as follows:

"the plaintiffs herein have been ready, able and willing to perform all of the matters and things to be performed by them, pursuant to the contract of July 9, 1908, heretofore set out, but"

And further in the same paragraph, commencing with the "to" on the eighth line from the top and ending with the word "or" on the ninth line from the top, which reads as follows:

"to join plaintiffs in the organization of said corporation, or"

We also desire to amend the first paragraph of the prayer of the complaint, commencing with the word "specifically" in the first line and ending with the word "he" in the third line, reading as follows: By striking out—

"specifically perform the contract of July 9, 1908, set out in the fifth paragraph of this complaint, or that he."

Those portions of the complaint have not been sustained by the proof and we desire to amend in order to conform to the proof.

Mr. GANTY.—I object to any such amendments being granted on account of the variance in the proof. The variance is so great that it is fatal to the cause of these plaintiffs—they want to amend practically their entire complaint and prayer, and I [183—141] don't believe they are entitled to that amendment at this time.

By the COURT.—I understand the complaint can always be amended to conform to the proof, if there is

a variance; this variance does not go to the real substance or merits of this case, it goes more to a certain theory with regard to the rights flowing from the facts and the agreeemnts of the parties. With regard to this first agreement, made in 1907, about forming the Mystic Corporation, it seems as far as the testimony discloses now that that has been abandoned by the plaintiffs and so far as the allegation of refusing to deed or asking in the prayer that the defendant deed as specifically set forth, that merely goes to the remedy that would follow, whether it was asked in the prayer or not, that is, if the plaintiffs are the owners of an interest here, the defendant is bound to deed it, whether it is asked for or not; it is their right, he holds it, in trust for them, they are the equitable owners. I do not see that the defendant is prejudiced in the least by these amendments, it does not change the nature of the action, it does not surprise the defendant, it does not take away any rights he has to defend this case, and the leave to amend may be granted.

Defendant allowed an exception to the ruling.

Recess to one o'clock.

#### AFTERNOON SESSION.

Mr. GANTY.—I desire to recall Mr. Kraemer for further cross-examination.

**[Testimony of Charles Kraemer, for Plaintiffs  
(Recalled—Cross-examination).]**

Mr. CHARLES KRAEMER, recalled for further cross-examination:

(By Mr. GANTY.)

Q. I hand you here a book and ask you to state what that is?



(Testimony of Charles Kraemer.)

A. The Cliff Mining Company cash-book and journal.

Q. You are the regular custodian of that, or have been? [184—142]

A. I have been, I am not at the present time.

Mr. GANTY.—They are admitted to be such, I believe?

Mr. DONOHOE.—Yes, we admit they are the books of the Cliff Mining Company.

Q. I hand you Plaintiffs' Exhibit "I" and ask you if you made that statement? A. Yes, sir, I did.

Q. I will ask you to turn to the journal of the Cliff Mining Company, if it is here—rather to the ledger instead of the journal— A. That is the ledger.

Q. Turn to the account headed Patent Expense on page 99. A. Yes, sir.

Q. State to the Court just what that account consists of.

A. That account consists of all the charges that were made in re the Gold Bluff Mining Company suit against the property of the Cliff Mining Company or the property the Cliff Mining Company leases.

Q. Does that include all of those charges?

A. All of the charges in so far as the survey is concerned.

Q. What other charges were there?

A. Well, the other charges against the owners were charges of Mr. Bunnell, the fees of Mr. Bunnell.

Q. It includes everything but the attorney's fees?

A. It includes everything but the attorney's fees.

Q. Now in this statement, Plaintiffs' Exhibit "I,"

(Testimony of Charles Kraemer.)

on the right hand side of the statement is an entry as follows: Survey \$40—I see the item runs clear across the page, under date of September 30, 1912, Voucher 1829, L. W. Storm, account of survey \$40—I will ask you if that item appears in this account, which is entitled patent expense? [185—143] A. It does.

Q. I will ask you to state how many more of the items contained in Plaintiffs' Exhibit "I" appear in that same account?

A. Well, they are all debited to the account—of course, there was a transfer of one lot of items of \$103.05 made from the account and the amount was charged to Mr. Ellis.

Q. When was that transfer made, on what date?

A. During the month of March, March 28th.

Q. What year? A. 1914.

Q. When is the first entry in that account?

A. In the patent expense account?

Q. Yes.

A. The entries in the ledger are all recopied from the monthly accounts in the journal and it would therefore be some time before September 30th.

Q. Some time prior to September 30th, in what year? A. 1912.

Q. And the last entry—

A. The last entry on the patent expense account on the debit side is March 31, 1914.

Q. That account, Mr. Kreamer, was practically a dead account carried there—it was just simply an account wherein was collected all these items?

A. Yes, sir.

(Testimony of Charles Kraemer.)

Q. The money paid out for these adverse proceedings by the Cliff Mining Company for all purposes, except the attorney's fees, were collected together in that account?     A. Yes, sir.

Q. And charged directly to it as they were paid out on vouchers?     A. Yes, sir. [186—144]

Q. When, if at all, was the apportionment made, or any apportionment made, of those expenses of the adverse suit, as betwen the owners of the lease, on what date, as shown by your books?     A. March 28, 1914.

Q. And under your method of making these statements and the method in practice in this company of making the statements to the owners of this lease of their royalties and their accounts with the Cliff Mining Company, would these amounts, this charge of that portion of these expenses of the adverse suit as appearing in these books, have been made in any statement given to them prior to March 31, 1914?

A. No, I never made a statement, that is, made a royalty statement until there was a royalty due; if the mining and milling account was more than the product of the mine, why I never made a royalty statement until there was royalty due the owners of the property.

Q. Would it be possible then for you to run through several months without making any statement at all to the owners?     A. Yes, sir.

Q. Did you, in fact, do so occasionally?

A. There were times when there wasn't any royalty for several months, for three or four months.

Q. This statement, Plaintiffs' Exhibit "I," con-

(Testimony of Charles Kraemer.)

taining these various items which were taken as you say from this patent expense account, was the first statement you made to the owners of the lease of those various items shown?

A. Yes, this is the first statement I remember making, dated April 1st, 1914.

Q. I hand you here Plaintiffs' Exhibit "K"—did you make out that statement?

A. No, sir, I did not. [187—145]

Q. Do you know who made it out?

A. I wouldn't say for sure—that was made out while I was gone into the Interior.

Q. You have already testified, I believe, that this statement, Plaintiffs' Exhibit "I," was the first statement made out of those items of patent expense?

A. Yes, the first statement that was rendered to the owners of the Cliff mine.

Therefore if this contains a statement showing that patent expense, it must have been made after exhibit "I"? A. Yes, it must have been.

Q. Who succeeded you in the office of the Steamship Company when you went into the Interior?

A. Mr. Millard took charge of the books while I was inside.

Q. Which Millard is that?

A. D. F. Millard, that is Frank Millard.

Q. Can you tell us from these books when the statement regarding the thousand dollar fee to Mr. Bunnell was first given to the owners of the lease?

A. Can I tell from the books?

Q. Yes.

(Testimony of Charles Kraemer.)

A. No, I could not tell when they made the statement out.

Q. You can tell when the entries were made, however.

A. I can tell when the entries were made.

Q. Will you kindly tell the date of that entry?

A. The first entry made here is dated May 31, 1914.

Q. Did you make out any statement showing 10% of the cost of the Gold Bluff suit?

A. No, I did not, I was not here at the time that the statement was made.

Q. Can you tell to what entry in your books that refers? [188—146]

A. Yes, I could tell—the items are on the ledger.

Q. In this exhibit “K” state what that item 10% of cost of Gold Bluff suit refers to.

A. It refers to a voucher here, dated May 31st charged to Mr. Treat, \$33.33—that was a third of a payment due Mr. Bunnell.

Q. And how came the item to be \$100 on the statement?

A. I suppose that was just made out by the book-keeper showing the full amount.

Q. There had been an amount paid previous to that?

A. No, the next amount was paid on a later date, that is the two-thirds payment—Treat paid \$66.67 on June 3, 1914.

Q. So that according to those books and your knowledge of these statements, the two items would be included—the \$100 included the two payments, one made June 3, 1914?



(Testimony of Charles Kraemer.)

A. One was made May 31st and the other July 3, 1914—it is July, not June.

Q. July 3, 1914?      A. July 3, 1914.

Q. You stated I believe that the company ceased to operate in August, did you not?

A. Well, that is the time I understood they were to turn over the property, the Cliff Mining Company—I wasn't here at the time they issued those orders, however.

Q. You were not here when they closed down?

A. No, I was not here.

Q. You might show from the books the last item of labor paid, the date of it, labor, that is for mining?

Mr. DONOHOE.—I will state to save time we will admit that they closed down at any time that counsel may desire to state, in July or August or whenever it was. [189—147]

By the COURT.—I don't see what bearing it has on this case, but if you think it is important, go ahead.

Mr. GANTY.—I think it has a bearing on this case and he can tell very easily.

The WITNESS.—The last item that was paid out for labor did you say?

Q. Yes.

A. Well, the last item that was paid out for labor, outside of Mrs. McDougall, the watchman, was on July tenth.

Q. I think you stated in your direct examination that you had a conversation with Mr. Ellis regarding this transfer of an interest from Mr. Smith to Mr.

(Testimony of Charles Kraemer.)

Archibald and you repeated a conversation that you had with Mr. Ellis concerning this transfer? You remember that, do you not?     A. Yes, sir.

Q. State whether or not you had not, previous to that conversation, had several others with him regarding this same matter.

A. Well, I couldn't remember anything before that, it may be that I had some afterwards, in a joshing way, that is, just meeting him on the street and Red and I were both friendly and I would josh him about having partners in the property.

Q. As a matter of fact, between yourself and Ellis, it was rather in the nature of a joke, the nature of a suggestion?

A. The first conversation that came up, that I stated yesterday, it was really that way, yes, sir.

Q. It was a matter of a joke, you brought it out, and it was so treated by you, was it?

A. Well, in an offhand way like two freinds will josh at times; at the same time I may have felt that there was something to it, but I couldn't say.

Q. It was said in a jocular way, in a jocular manner?     A. Yes, sir. [190—148]

Mr. GANTY.—That will be all.

Witness excused.

Plaintiffs rest.

Mr. GANTY.—At this time we move for a dismissal of this action for the failure on the part of the plaintiffs to offer evidence to susutain their pleadings.

The motion was by the Court denied and defendant allowed an exception to the ruling.

**Defense.****[Testimony of H. E. Ellis, on His Own Behalf.]**

H. E. ELLIS, the defendant, called and sworn as a witness in his own behalf, testified as follows.

Direct Examination by Mr. GANTY.

Q. What is your name?      A. H. E. Ellis.

Q. You are the defendant in this action are you?

A. Yes, sir.

Q. You live in Valdez?      A. Yes, sir.

Q. How long have you resided there?

A. It is about 1901, when I made it my postoffice address.

Q. Are you acquainted with Mr. George C. Treat?

A. Yes, sir.

Q. With Mr. Edmund Smith.      A. Yes, sir.

Q. And with Mr. Logan Archibald?

A. Yes, sir.

Q. They are the plaintiffs in this action, are they?

A. Yes, sir. [191—149]

Q. Are you acquainted with Mr. A. J. Crane?

A. Yes, I met him here in Valdez.

Q. You are the owner of the mining property which in these proceedings has been designated as the Cliff mine. I believe?

Mr. RITCHIE.—We object to that as calling for a conclusion of the witness.

Q. You were the owner of such property at least?

A. Yes, sir.

Q. And in order not to call for a conclusion, I will simply leave it in that light—you were the owner of

(Testimony of H. E. Ellis.)

such property on the 15th day of May, 1907?

A. Yes, sir, I was.

Q. On or about that day you entered into an agreement with Mr. Smith and Mr. Treat concerning this property?      A. I did.

Q. I will ask you if that is the agreement shown there? (Handing witness paper.)

A. Yes, sir, that is the agreement.

Q. State the circumstances that are material to this case concerning this agreement and the circumstances that surround it?

In March, 1907, I began work on the property with Mr. Dean, driving a tunnel *above* 60 or 70 feet above sea level and we worked there in the neighborhood of two months, from the first of March, driving about, in the neighborhood of 50 ft., and most of it was open cut, probably thirty foot underground working, in which we found some very good ore and got quite a little bit out of it. Some time later I approached Mr. Treat with the idea of getting money to make a shipment of this ore, to have it tested, and he mentioned Mr. Smith as being interested in mining in the States and the Black Hills region, I believe it [192—150] was and if he would go into the proposition with them, they would furnish the money to go ahead and ship this ore. He took it up with Mr. Smith and it was agreeable and they agreed to put up \$500 for covering the expenses of getting this ore ready and shipping it to the Selby smelter; that is the time this agreement was drawn up, to cover that understanding.

(Testimony of H. E. Ellis.)

Q. You received the \$500 at that time?

A. I received the \$500 at that time and employed part of it for that purpose.

Q. State what you did toward carrying the contract out, what ore, if any, was shipped to your knowledge and all the circumstances connected with it and the returns.

A. We took what ore was already on the dump and got out a little more, which we thought at the time would be more than five tons as agreed upon, but after we had brought it up and got an estimate on the weights of it, we found that the sacks did not hold near as much as we had supposed they would, and it made quite a little bit less than five tons. I turned the ore over—brought it up in a small launch I had at that time, and turned it over to Mr. Smith at the Valdez dock. He was supposed to look after the shipping of it and the collection of the money. He got the returns some time after, which were anything but satisfactory—I believe the amount was, the net returns, were something like \$136. He showed me the statement from the Selby smelter at that time or shortly afterward and this is my remembrance of it.

Q. Did you ever receive any money on account of the proceeds of this ore?

A. No, there was no dividends declared on the proposition, for the reason that it did not cover the original amount invested, to say nothing of their one-quarter interest to be allowed [193—151] for furnishing the money.



(Testimony of H. E. Ellis.)

Q. So that you never made any claim for any returns on that?

A. Never made any claims at all for the return of any part of the money.

Q. You subsequently entered into a further agreement, did you not, with Mr. Treat and Mr. Smith, concerning this property?     A. I did.

Q. I will ask you if this is a copy of that agreement? (Handing witness paper.)

A. Yes, sir, that is a copy of it.

Q. Was this signed by all of you at that time?

A. It was.

Q. Those are your signatures to it?

A. Yes, sir.

Q. Signed by Mr. Treat and Mr. Smith and yourself?     A. Yes, sir.

Q. In your presence?     A. In my presence.

Q. State, Mr. Ellis, the circumstances connected with this contract and its entering into between yourself and the other parties to it.

A. The contract of incorporation is it?

Q. It is Plaintiffs' Exhibit "D," which I handed you—Just state in your own words, the circumstances connected with it.

A. After several discussions we concluded that it would not be worth while to ship any more ore to the smelter, on account of the poor returns we had received from them, it would not much more than cover the cost of sending it out and Mr. Treat and Mr. Smith gave me to understand that they would get persons interested [194—152] in the property, in

(Testimony of H. E. Ellis.)

a company to be formed here in town, that would furnish enough money to put in a small plant for the extraction of the gold from the ores and they further stated that if they could not get the parties interested in this project, why they were able and willing to go ahead with it and furnish the money, that is, if necessary, but that they would try to get parties here in town interested—I know they spoke of Mr. Ed Woods as one and Mr. Lathrop—they said they were both public-spirited men and would probably take a chance on a proposition of that kind; it wasn't only a chance to make something for themselves, but it would tend to develop this section of the country and they were all heavily interested and they thought that they and a number of others here in town would be only too glad to help the matter through, so we drew up this contract with that idea.

Q. Is that all that occurred prior to the drawing up of the contract as far as you can remember?

A. Yes, sir.

Q. You might state what was done by you towards the carrying out of this contract and the circumstances connected with the carrying out of this contract,

A. We had a number of discussions on the subject.

Q. For the purpose of refreshing your memory, I will ask you if this was the paper that was entered into, Plaintiff's Exhibit "B," in compliance with the terms of this agreement you have just referred to? (Hands witness paper.) A. No, that is not.

Q. I mean Defendant's Exhibit #2.

(Testimony of H. E. Ellis.)

A. Yes, the articles of incorporation were drawn up in accordance with that agreement at a later date.

[195—153]

Q. I wish you would state to the Court your recollection of these matters.

A. We agreed to incorporate this Mystic group of claims, as we called it and sell enough of the treasury stock to pay for the installation of the plant and work it as a corporation.

Q. These papers were drawn up in pursuance of that agreement?

A. The articles of incorporation were drawn up and were signed by the parties interested, at that time.

Q. State just what occurred at the time of signing these articles of incorporation and where were they signed?

A. They were signed in Mr. Smith's office.

Q. Did you sign any other document at that time?

A. I also signed an option agreement to transfer the property to this company.

Q. Who signed that?

A. I signed that myself, the other parties not being interested in the property.

Q. That is this agreement marked Defendant's Exhibit #7, that is a copy of it?      A. Yes, sir.

Q. State what was done with those papers.

A. The articles of incorporation were left with Mr. Smith in his office to be filed with the clerk of the court and one sent to Juneau in the regular routine.

(Testimony of H. E. Ellis.)

Q. Now, state what was done further by the parties towards carrying out this agreement, proceed with your own story.

A. Mr. Treat and Mr. Smith saw a number of parties and they failed to get much encouragement or as much encouragement as they expected, and it was so reported to me afterward, that they had been unable to get these parties *that* had mentioned to take any [196—154] interest in it at all. After some little time, why, we came to the conclusion that it would be impossible here in Valdez to get the money.

Q. State what was done then by the parties.

A. We afterwards agreed to abandon this plan of selling the stock as they had not been able to sell any here in town, among the parties they had approached and to let the thing fall back on to this first agreement which we made in regard to this lien on the property. The first agreement we signed was regarded by us as a mortgage on the property and they let it drop back to that status.

Q. About how long was that afterwards?

A. This was some months afterwards, probably in the fall of 1908.

Q. What was done after that by the parties toward developing these mining claims?

A. Mr. Treat and Mr. Smith both spoke to me in regard to this—they would like very much if I could do something to repay them the money I owed them, and I said there wasn't much chance of my doing anything at the time, getting hold of that

(Testimony of H. E. Ellis.)

much money just at that time, and they wanted to know if I couldn't dispose of this property for the purpose, to repay them—they were very much in need of the money and would like to have it at that time. Times were pretty hard here at that time in Valdez and they were in need of ready money.

Q. You subsequently made another agreement in which the plaintiffs were interested, did you, concerning this property?

A. Afterwards, the next year, we gave an option to lease to Mr. Crane.

Q. This is the option, is it not? (Handing witness paper.)

A. Yes, sir, that is the option. [197—155]

Q. It is marked Plaintiff's Exhibit "B"?

A. Yes, sir.

Q. Now, just continue your story and bring in this option, as the facts occurred?

A. A gentleman that had some claims out here near the glacier tried to work them at that time and brought up an outfit from below to put on this property out here on the glacier.

Q. Mr. Haines?

A. Yes, Mr. Haines; and they turned out to be of no apparent value. Mr. Dean had been working me down at the Cliff mine—he was the man that helped me do this work in March or April, 1907, and he had some specimens of this work and he showed it to Mr. Rider, who was working for this outfit—I don't remember the name of the company that had the Haines property.



(Testimony of H. E. Ellis.)

Mr. RITCHIE.—Is that the Rider that is here now?

A. Yes, sir—he was working for him at that time—he gave me an introduction to Mr. Rider.

By the COURT.—Who gave you an introduction to Mr. Rider?

A. Mr. Harry Dean. He showed him this rock and Mr. Rider was very much interested in the specimens of the rock on account of their value and the description Mr. Dean had given him of the property. Mr. Dean was highly impressed with it and he came to me and asked whether I couldn't do something with this company, that they had made a failure of the proposition out here on the glacier and why couldn't I take it up with them, and I told him that my idea of the proposition was that they had just bought a gold brick and it would be very hard to sell them twenty dollar gold pieces then for any amount of money. Anyhow, Mr. Rider gave me an introduction to Mr. Crane and spoke to Mr. Crane on the subject, brought the matter to his attention, [198—156—157] and just about that time Mr. Milard met me on the street one day and said he had heard a great deal about my having a prospect down on the Bay that showed good values in gold and asked what I expected to do with it. I told him I wanted to get some one interested in it that would put up machinery on the property and get it producing, and he asked me if I would be willing to show him, if I had any samples of this ore. I told him I had, down in my shack on the reservation,

(Testimony of H. E. Ellis.)

and he asked if I would show them to him, and I said I would be glad to show them to anybody that was interested. He went down to the shack and I had a thousand or fifteen hundred pounds of rock there on the floor and he examined it, large chunks of it, and we sat down there and broke rock for I expect half an hour or more. He thought well of the samples and wanted to know what I would do about it, and I made him a proposition of a quarter interest if he would put up money enough to put the machinery on the ground and go ahead and develop the property—I thought it would pay for its own development. He tried first to buy the property, or to get a controlling interest, buy a controlling interest. I refused that, and stipulated that this money was to be expended under me, in accordance with my idea of it—I didn't want the money, a few thousand dollars, wasted; so he finally agreed that he would put up this money. He said, "Red, if this proposition is as good as you say it is, if it is one-tenth as good as you say it is, I will put up \$5,000 of my own money and friends' back in the States—I will agree to get them to put up \$5,000 more to carry this thing through." And he says, "I want to shake hands with you," which he did at that time, and he says, "when can we go down to see the property?" and I said, "We will go down at your convenience; I am not [199—158] doing a thing now and will be glad to go with you at any time," and I believe he said, "I will go down the next day," at any rate, in a short time, probably the next day, I think it

(Testimony of H. E. Ellis.)

was, we went down and Mr. Crane asked me, I think the same evening, if he could go and see the property, and I told him no, that Mr. Millard was going down; I had a deal on with Mr. Millard and I didn't care to take anybody outside of that down excepting the ones that would be interested; I said if Mr. Millard was agreeable, of course it was all right with me, and he went and saw Mr. Millard and got permission to go down with him and he took Mr. Rider with him at the time and Mr. Haines, also, and it seems to me that Mr. Millard had some man with him, but I am not positive of that. So we went down the next day and examined the property and Mr. Millard liked it very much, and when we were sitting there, there was a showing above this upper tunnel where I had done a little work, some work, that spring, probably forty or fifty feet above, higher up the hill, and a little distance from it—we were sitting there, it was exceptionally rich rock; you could see gold all through it; we were sitting there looking at this fine specimen and he said, "Red, why didn't you tell me what this was like?" and I said, "I thought I told you as near as I could, not to exaggerate it," and he said, "You didn't exaggerate it, it is a hundred times better than you said it was." Then we returned; he took samples and we returned to Valdez and he asked me when he could see me on the subject, and I said, "At your own convenience." He said, "Well, will you come to my room after I have had some of these samples run?" and I said, "Yes," and he named the next

(Testimony of H. E. Ellis.)

afternoon, I think it was, at two o'clock; so I left him. This was probably in the middle of [200—159] the afternoon, and I went down to Mr. Smith's office, and Mr. Treat was there at the time, I believe, and I asked him what their idea would be as to a cash settlement of this debt against the property, and they said that they wouldn't—I told them that Crane—they knew, of course—everybody in town knew—that I had some deal on with Crane in regard to the property, but they said they wouldn't consider a cash settlement at all—that they really considered Smith put this in, that they really considered this money, after running so long, as something in the nature of a grubstake, that they really ought to have an interest in the property itself, and I came down flatfooted, and I said, "Not by a dam sight"; they said they couldn't think of accepting a money settlement, and I said, "Well, we will drop the thing right now. I won't go ahead with this proposition with Crane," and I walked out of the office and later, I don't know, but I don't believe I went back to Mr. Crane's office, to his room in the hotel, because I didn't think it was worth while, but Mr. Treat evidently met Mr. Crane later and Mr. Treat hunted me up and asked me to go back and see Crane and have another talk with Crane, and he said, "Now, for myself," he says, "I want to see this thing *to* through," and he says, "I would be willing to accept an interest in the royalty, in this leasing proposition; I would be willing to accept an interest in the royalty and I think that Mr. Smith would,

(Testimony of H. E. Ellis.)

too; we talked it over somewhat after you left and I believe he would be willing to do something that way," and I said, "How much royalty would you want?" and he said he thought they ought to have 20%, and I said, "You fellows want the earth for a measly \$500, don't you," and I said, "This proposition is going to be a valuable property and produce a good deal of money, much [201—160] more than would repay you for the use of your \$500, surely not less than that," and he said, "for my part I would be willing to take 15% or ten per cent," he said, "anything to insure the return of the money I have put into it."

Mr. RITCHIE.—Who said that?

A. Mr. Treat, we were talking on the street as we walked downtown. "I would be willing to accept anything reasonable that would insure the return of my money"; he says, "I am a heavy property holder and if we can get some mines started in this neighborhood it will be a great improvement to the town," and he says, "Mr. Smith feels the same way, if we can only get this thing started up," and I said, "Well, under those circumstances I will go in and see Mr. Crane and have another, a further talk, with him," which I did, and we practically arranged our agreement as outlined in this option to lease. *The* Mr. Crane, he was very busy, it was just before he was leaving, I think the same afternoon—this was during the afternoon and he was very busy getting off some letters or report or something, and he said, could I see him later; I said I could. When



(Testimony of H. E. Ellis.)

Mr. Treat left me, he returned to Mr. Smith's office to see if they couldn't come to some conclusion in regard to this proposition on a royalty basis and after leaving Mr. Crane I met Mr. Smith on the street—I mean Mr. Treat—and he said, “I talked it over with Mr. Smith and we agreed that we would accept of part of the royalty in payment of this”—he says, “Mr. Smith thought you had better write it down, just in the nature of a letter,” he said, “to that effect,” and he handed it to me.

Q. Have you got it here?

A. I have. [202—161]

Q. I will ask you if this is the letter that you say was handed to you by Mr. Treat at that time?

A. That was handed to me by Mr. Treat on McKinley Street.

Q. What statement did he make at the time that was handed to you? Give the exact conversation that occurred between you and Mr. Treat at the time he handed you this letter.

Mr. GANTY.—I want to offer this letter in evidence.

It is admitted, without objection, marked Defendant's Exhibit “9,” and reads as follows:

**Defendant's Exhibit No. 9 [Letter, June 5, 1909, Geo. C. Treat et al. to H. E. Ellis].**

Valdez, Alaska, June 5th, 1909.

Mr. H. E. Ellis,  
City.

Dear Sir:

In answer to your inquiry as to what we would

(Testimony of H. E. Ellis.)

take or accept for our fifth interest in the Gold Lode Mining Claims, located by you on North side of Valdez Bay, will say:

That we will accept fifteen per cent net of royalty on lease of property provided the contract of lease is satisfactory or we will accept twelve thousand five hundred dollars in cash net for our interest in said property.

Very truly yours,

GEO. C. TREAT.

EDMUND SMITH.

By the COURT.—This letter is dated June 5, 1909—that is the date this agreement was entered into with Mr. Crane? A. Yes, sir.

(By Mr. GANTY.)

Q. (Continued.) Now, you may state the conversation that occurred at the time this letter was handed to you by Mr. Treat.

A. Mr. Treat handed me the letter and he said, "We drew this up—Mr. Smith thought it would be best to embody this in the form of a letter, which we both signed and he said we decided to accept 15% of the royalty." He handed me the letter and walked on. I was on my way to see Mr. Crane at this time; in fact, I went back to see Mr. Crane at this time. [203—162]

Q. What did you do with Mr. Crane?

A. I came to a complete understanding then with Mr. Crane. First, I would say, I was surprised that they wished so much—I was in hopes all the time that I might be able in some way to pay off this

(Testimony of H. E. Ellis.)

money indebtedness and retain the full interest in all the claims and the royalties and have no outsiders at all and I started to walk away and was rather vexed when I got thinking over the subject. Mr. Treat had been very good to me and offered me money and loaned me money and never pressed me for the payment of it, and when he said 15% or 10% I had thought at the time that ten per cent would be the basis of what they would ask of the royalty, and as I say, I started to walk on and I got thinking, well, an extra 5% wouldn't be so great a lot, that they really had earned that much anyway and I would be only too glad to divide up, if there was anything an extra 5% wouldn't amount to anything anyway and I went on then up to Mr. Crane and we concluded our agreement and from there I went down to Mr. Smith's office and told him what we had done. Mr. Crane said, "Now, I am very busy and have a lot of papers to write and some packing to do; if you will see Mr. Smith and get him to draw up this option on the lines of our talk, why it will save us a lot of time"; he says, "I really haven't time to go down to see him myself, and you make some date when I can see him, and we can call in there to-night and sign this contract." I went down to Mr. Smith and explained the matter to him and he drew up this option and set, I think it was, 7:30 o'clock in the evening—this was probably half past four or five o'clock—he set, probably, I think about seven or half-past seven in the evening for us to come in and sign it, and he said, "If you will come in a little

(Testimony of H. E. Ellis.)

earlier, why we can look this thing over and [204—163] talk it over and see that everything is as you would like to have it and if there is any objections or corrections to make, why, we can make them before Mr. Crane comes in. Any suggestions you have we can take up,” and I called in there before the time, I think about half an hour ahead of the time, that Mr. Crane was to arrive and we looked it over and I did have a suggestion to make and we talked it over and when Mr. Crane came we discussed it with him and inserted it, inserted the correction in the lease.

Q. Do you remember as to what part of the lease the correction was made?

A. No, I can’t think right now what it was.

Q. You remember making some correction to the lease?

A. Yes, I do, but I don’t remember exactly what it was.

Q. I will ask you if that was the correction that was made at the time you testified about? (Hanging witness Plaintiff’s Ex. “B.”)

A. Yes, that was the one; it was in regard to the settlement that was to be made—there was no mention of the time when this settlement was to be made and I thought we had better have something put in regard to that and Mr. Crane was perfectly willing that it should be written in.

By the COURT.—Do you consider that important? Do you want to introduce this? It says, settlement to be made each month, in writing,—do you

(Testimony of H. E. Ellis.)

desire to introduce this for the purpose of showing that?

Mr. GANTY.—Yes, sir.

By the COURT.—It is set out in the copy just the same, but that shows it to be in writing.

Q. Who else was there at that time?

A. At the time we discussed this before? [205—164]

Q. Yes.

A. There was no one but Mr. Treat and Mr. Smith; and among other things that they spoke of at the time when we entered into this contract, a day before, was the idea of Mr. Treat acting as my attorney in matters pertaining to this.

Q. Mr. Treat, you say?

A. Mr. Smith, I mean; as he was a lawyer, he would act as my attorney and that was one of the considerations of this interest in the royalty being *vien* him, that he should act as my attorney in the drawing up of all papers and seeing that everything was legally done; he said, “There was always more or less difficulty between the owners and leasing companies, there would be difficulties coming up all the time and it was very good for some one, to have some one, to take care of your side of the proposition.”

Q. And that was before Crane came in, was it, during the negotiations?

A. Yes, that was before Crane came in and at that time we also were talking over the status of the contracts we had entered into before and they turned over to me the articles of incorporation and agree-



(Testimony of H. E. Ellis.)

ment that they had made.

Q. This one you mean? Is this the articles of incorporation that you state was turned over to you at that time? (Handing witness Defendant's Exhibit #1.) A. Yes, sir.

Q. State what you did at that time.

A. I asked about these articles of incorporation and what was to be done with them, since we would have no further use for them and they said, "Well, you can do as you please with them," and they got them out and handed them to me and Mr. Smith had one of [206—165] them in his desk, I believe, that he handed to me and he said, "You can do with it what you please, put them in the stove if you wish to." "Well," I said, "I believe I will save that as a souvenir; I will just tear off the signature and put that in the stove and save the rest as a souvenir."

Q. Is this the one you are testifying to as having torn off the signature? (Handing witness paper.)

A. It probably is—yes, that was probably the one I tore off at that time.

Q. What else was done at that time?

A. He got the others—I think he had the others in his safe,—at any rate he got them and brought them in, the copies, and was going to hand them to me; he sat down at his desk and I speaking to him said, "Wouldn't it be a good idea to run a pen through these other names?" and he said, "Yes, if you wish to," and proceeded to run his pen through the other names, the other signatures, at his desk.

Q. I will ask you when this instrument, exhibit

(Testimony of H. E. Ellis.)

#7, appeared in the transaction?

A. This was gotten up just before, probably a day or so, or about the time that the articles of incorporation were drawn up.

Q. Were these returned to you at the same time as the articles of incorporation?

A. I believe they were.

Q. And you have had them in your possession probably ever since?

A. I have had them in my possession ever since.

Q. You may continue.

A. We talked this matter over and these papers were returned to me and Mr. Treat came in about fifteen minutes after I did and after we discussed this and talked of this correction, we waited for Mr. Crane to come in and sign the papers and we signed [207—166] the papers and each kept a copy of this contract or option to lease.

Q. State what transaction occurred, if any, subsequent to that option of Mr. Crane's being signed, the lease?

A. The next thing of importance, I believe, was making out this lease to Millard.

Q. State the circumstances in connection with that?

A. As I understood it, Mr. Lathrop got very much interested in the property on Mr. Millard's report and when Mr. Crane found he couldn't carry out his agreement, Mr. Lathrop kept track of it, I believe, or kept in communication with him—when he found he couldn't go through with it he sent Mr. Millard down to try to secure this option, which he did, and

(Testimony of H. E. Ellis.)

they asked me to fulfill the agreement.

Q. Give the facts that occurred at the time of the signing of this agreement with Millard, this lease, as between yourself and any of the parties to the contract?

A. This paper was drawn up by Mr. Smith; I came in and read it over some little time before Mr. Crane appeared to sign it, before the time set for him to come in and sign the paper—I wanted a chance to read it over and discuss the matter, thought there might be some corrections to make.

Q. You mean Mr. Millard instead of Mr. Crane, don't you?

A. Yes, Mr. Millard was to come in and sign this lease and I came in early and read over the lease—Mr. Smith had already received a copy before I got there, Mr. Treat, I mean—Mr. Smith had drawn it up in the office. I read over this lease and I objected at the time to the way the ownership was set forth there, as owners of certain parts, that they were represented as owners of part of the ground and I brought that question up at the [208—167] time, *objection* to it, and Mr. Smith said that he put it in that way as he thought they could better represent his and Mr. Treat's interest and that he could also better protect me in the matter as my attorney, and with that explanation I let it go—I didn't like the looks of it, but I thought it would be all right, because we had such a thorough understanding on the subject and also had this letter that they had written me—I thought that was sufficient, even though their spoken

(Testimony of H. E. Ellis.)

words would not hold, that that surely would, although I had no doubt as to their understanding of our agreement at any time and never have had since, until the time—

Q. State what that agreement was?

A. That they were to receive in full payment for all the money I owed them, receive fifteen per cent of the net royalties in the lease to be given Mr. Crane.

Q. That was the entire understanding, was it?

A. That was the understanding between us at the time and was my understanding up to quite recently; the subject was never discussed between us afterward, because I never thought that there was any subject to discuss in that line—I understood it thoroughly and I supposed they did and they have never brought it up.

Q. That is the extent of your conversation practically with Mr. Smith on that question of the description of the owners?

A. That is, yes, sir, that was practically all as near as I can remember, that was the entire conversation. He described himself and Treat as owners, so they could better protect me and themselves in the lease as against the company.

Q. State if about that time you had any conversation with Mr. Treat regarding the cancellation of this mortgage.

A. The mortgage on the property I understood was canceled with [209—168] return of these articles of incorporation and our agreement—I understood that was a cancellation of the mortgage on the prop-

(Testimony of H. E. Ellis.)

erty itself and at the time Mr. Treat agreed to cancel—I asked him in regard to the mortgage on the other property, the lot on McKinley Street, and he said, “I will see that the mortgage is satisfied,” and later I asked Mr. Smith if it was; I was in the office there with Mr. Smith, and he said he didn’t know, but he said he supposed it had, but at any rate they would see that it was.

Q. Did you have any further conversation on that subject with him?

A. Some time later I was told, some time after, by some parties, “I see you have a mortgage on this lot on McKinley Street”; I said, “No, that has been satisfied for some time”; he said, “No, I was looking over the book at the recorder’s office a few days since and I found it was still of record.” I made it a point, then, of seeing Mr. Treat in regard to it, and he gave me rather an odd answer I thought at the time, but it was perfectly satisfactory; he said—I told him that I understood he was to cancel that mortgage—he said, “Well, I neglected to do it,” but he says, “The lease has never produced anything, we never got any returns from this interest on the lease”; he said he would look after it, though, later, and I let it drop at that.

Q. What time was that in the period of the lease—which lease?

A. The lease to Millard, and that was some time after they had taken possession down there and started work, I think in the fall of 1909—they began working in August.



(Testimony of H. E. Ellis.)

Q. When did they first pay a royalty after that?

A. I think it was the following April, next spring at any rate.

Q. Do you know how much royalties you received from that lease?     A. No, I do not. [210—169]

Q. Can you give an estimate?

A. No, I could not.

Q. Did you ever figure out how much royalty Mr. Treat received at any time?

A. I did glance over my statements at one time and I think it was something like  $\frac{3}{4}$  I got figuring it from the statements; I didn't have them all, but from the statements I had I think it was something like seven or eight thousand dollars.

By the COURT.—You each know what the other received, but not what you received.

The WITNESS.—Mine was very badly mixed up,—I didn't go to the trouble of looking it up, but I was interested in knowing whether they had received enough to compensate them for the money.

Q. Were you ever notified by Mr. Archibald that he had acquired an interest in this property?

A. I never was.

Q. Were you ever notified by Mr. Smith that he had sold Mr. Archibald an interest in the property?

A. I never was.

Q. You heard some evidence given here regarding some amended location notices—you might state the circumstances surrounding that episode as you know them to be.

(Testimony of H. E. Ellis.)

A. In the summer of 1910, I believe it was, the matter was brought up of having a survey made of the claims; when it was brought up first it was discussed, and I thought that the property should be patented, if possible, as soon as we could, and it was taken up by Mr. Smith with the company to see if they would not have a patent survey made and application—see if they wouldn't go ahead to get the ground patented, so that there would not be any trouble with other locators; and we came to [211—170] an agreement that they would go ahead with this and the money was to be taken out of the royalties—the company thought it would be a protection for themselves and for the lessors as well—so they employed Mr. Storm to go ahead and make this survey, and, in looking over the ground, we found that the claims, some of the stakes, were not where they should be—the claims were too wide at one end, that was the principal change and that they should be drawn in quite a little bit and it was suggested that they make amended location notices and at the time of employing Mr. Storm, that was one of the things he was asked to *go* and agreed to do, was to make the survey and make out the amended notice and put them on the ground on the new stakes—he was going to put in new stakes, larger, and different wood from the ones we had in; most of them were large alders that had been put in originally and he was to use spruce, square timbers, when he made his survey.

(Testimony of H. E. Ellis.)

Q. So he was to put these notices on the ground?

A. I thought for quite a while that he had put them on, but I never had seen any of them on the ground, so I came to the conclusion that he did not do it.

Q. Was it understood or stated whose names were to be on these notices?

A. It was understood by me that my own name was to be on, that there was to be no change made in the location excepting just to bring in and get the surveyor's accurate description of the boundaries of the ground, and that the ground was still in my name, as I had every reason to suppose it would continue to be.

Q. Did you ever see these amended location notices?     A. I don't remember ever seeing them.

Q. You have been absent from Valdez for some time, have you?     [212—171]

A. From December, 1913, to May, the latter part of May, 1915.

Q. Who acted as your agent while you were away?     A. My brother, Mr. Will Ellis.

Q. What powers did you delegate to Will Ellis?

A. The same powers I would have if I had been in regard to all my mining claims—left him in full charge of the conduct of all my business.

Mr. RITCHIE.—If there is a written power of attorney, I would like to see it.

The WITNESS.—There was no written power of attorney—I took him into the bank and told them

(Testimony of H. E. Ellis.)

he would sign checks in my name, and also took him into the Cliff Mining Company's office, and told them that he would receipt for me for all royalties and that they were to be turned over to him and I asked them—"Shall I make out some written notice of that kind," and they said—Mr. Kraemer was there at the time—and he said, "No, it will not be necessary, your word, your statement, will be sufficient."

Q. Had you told your brother at that time everything in connection with the condition of your affairs here?

A. Practically everything, especially in regard to the Cliff Mining Company and other mining claims.

Q. You believe he was thoroughly familiar with all the facts?

A. I thought he was—I believe he was.

Q. You appeared as plaintiff in the adverse suit entitled N. E. Ellis against the Gold Bluff Mining Company brought in this court?      A. Yes, sir.

Q. Did you ever have any conversations or other communications with Mr. Treat or Mr. Smith regarding that suit?

A. Mr. Treat spoke to me of the matter; I met him on the street one day and he spoke of it; Mr. Smith was in the States, and some time after the thing had gotten pretty well along, I think [213—172] Mr. Bunnell was working on the papers, I received a letter from Mr. Smith stating that he would be glad to make out the papers, but that is as far as

(Testimony of H. E. Ellis.)

it went; there was no further communication from Mr. Smith, and I don't remember just what Mr. Treat said in regard to the matter; it is of no importance.

Q. Did Mr. Treat or Mr. Smith ever make any offer to appear as coplaintiffs with you in that case?

A. None whatever.

Q. Had they any right to do so?

A. None, not the least.

Mr. GANTY.—I will offer the files in Number 607, H. E. Ellis vs. Gold Bluff Mining Company. They are part of the court records.

By the COURT.—You will have to substitute copies if they are necessary to be made part of the record.

Mr. GANTY.—I will have the copies made, if need. The above file #607 of this Court, is marked Defendant's Exhibit #10 and admitted in evidence.

**[Stipulation re Defendant's Exhibit No. 10.]**

It is stipulated by counsel for the parties respectively that in lieu of Defendant's Exhibit #10, consisting of files in case No. 607, the following statement of facts may be substituted and incorporated in the Bill of Exceptions, to wit;

First. That said cause was regularly brought before the District Court for the Territory of Alaska, Third Division, on complaint filed February 22, 1913.

Second. That in said cause H. E. Ellis was the sole plaintiff and the Gold Bluff Mining Co. the sole



defendant, and no appearance was made by any other person. The issues in the cause at bar were in no way involved, directly or indirectly.

Third. That in the complaint in said cause No. 607, the plaintiff therein, H. E. Ellis, alleged himself to be the lawful owner and entitled to the possession of the Mystic No. 1 and No. 2, [214—173] Mystery No. 3 and Parallel No. 2 lode mining claims, which said claims are in controversy herein. Said Gold Bluff Mining Co. claimed part of the ground included in the above-named claims and had applied for patent for said together with other lands included in its claims. H. E. Ellis for himself alone had filed an adverse claim, and brought suit to determine right of possession.

Fourth. The final decree, entered in said cause Nov. 17, 1913, declared said H. E. Ellis to be the owner and entitled to the possession of a part of the ground in dispute with the Gold Bluff Mining Co., describing the same by metes and bounds, and decreed the remainder of the disputed ground to the Gold Bluff Mining Co., each party relinquishing to the other the land decreed to the other. This decree was entered pursuant to stipulation of the parties.

Q. Have any of these plaintiffs ever made any demand upon you for a deed or any other recognition, written or otherwise, of their interest, or any interest, *or any interest*, in this mining property, except that of the 15% royalty which was agreed upon in your lease to Mr. Crane and Millard?

(Testimony of H. E. Ellis.)

A. None, up to the time that this suit was begun; never at any time—there was never any suggestion of anything of that kind brought up.

Q. You have, however, received several letters from some of them, haven't you?

A. Yes, I received letters from Mr. Treat and Mr. Smith both.

Q. Did you ever consider any of those as demands or claims entitling them to the property?

Mr. RITCHIE.—We object to that. (Question withdrawn.) [215—173½]

Q. This attorney's fee in this Gold Bluff adverse suit just introduced here in evidence—State to the Court just the circumstances about that.

A. This matter of the Gold Bluff obtaining a patent came up; they advertised it, and it was brought to my notice and I went to the Cliff Mining Company's office to make a protest against allowing the thing to go through and Mr. Lathrop was in the office by himself, I believe, at that time, and he asked me to come in and sit down and we went into the back room and sat down and discussed the proposition and I told him I thought it was up to them to protect against all infringement, that was my understanding of the lease, and we had quite a conversation, and he said, well, he thought with me, that it was up to the company to protect me, to protect the ground, and we talked probably for half or three-quarters of an hour on very friendly terms, and he asked me if I had any particular lawyer I

(Testimony of H. E. Ellis.)

would like to employ, because he said if I didn't have, Mr. Bunnell was doing the company's business and his office was right across the street, that Mr. Bunnell had been doing considerable business for the company, and if I had no objections he would like, they would like to have him do the work. I said I had no objection whatever; "Well," he said, "if you will step across the street with me, I will instruct Mr. Bunnell to go ahead with the papers, to begin suit to stop this patent."

Q. When were you first apprised of the fact that you had been charged with the money in the shape of attorney's fees for this suit?

A. I don't remember; I think it was probably this summer; Mr. Bunnell told me that before I left in the fall of 1913, that he was looking to me for payment. I told him I had nothing [216—174] to do with it whatever, that I had not employed him, that Mr. Lathrop had given him instructions, and that the Cliff Mining Company were supposed to pay him.

Q. Did you ever ask these plaintiffs to pay a portion of the attorney's fee?

A. Never at all, at any time, because I didn't think they or I were required to pay them.

Mr. GANTY.—That is all.

Cross-examination by Mr. RITCHIE.

Q. When did you locate these claims?

A. In the summer of 1906.

Q. All of them?

(Testimony of H. E. Ellis.)

A. No, a part of them were located afterwards, in the summer of 1907 or '8, I couldn't say—I know it was after we had begun trying to do something with the ground.

Q. How many of these claims were located before you made the contract of May 15, 1907, with Treat and Smith?

A. I think there was just two at that time; we located these surrounding claims as a protection, because at that time no one believed that there were any values in the ground, in that section, there was no danger of bothering them.

Q. All except the first two were located just as you say, for protection?

A. No, it was valuable mineral ground—they showed good signs of carrying mineral there.

Q. You made the first discovery near the beach on the Mystic Number One, did you not?

A. Yes, sir; that is the first discovery, on the Mystic Number One, that I made there—the first discovery of the ground was made [217—175] on the Mystic Number Two.

Q. That was in the summer of 1906?

A. It was started in the summer of 1906.

Q. You located two claims during that summer?

A. Yes, sir.

Q. You say that you and Harry Dean went down about the first of March, 1907, to do some work, did you not?

A. I believe it was in the neighborhood, about the

(Testimony of H. E. Ellis.)

first few days of March somewhere, 1907.

Q. You had done no work the summer previous, had you?

A. No, very little—I had done a little, put in a few shots there.

Q. What a prospector does when he thinks he has something—to investigate a little further?

A. Yes, to investigate, and dug in a little on the vein.

Q. The first work, the first actual work you did of any consequence was when you and Harry Dean went down there in March, 1907?

A. Yes, that was the first work of any account.

Q. Did you do much work in March?

A. We worked the entire month, I believe.

Q. The snow was extremely deep then?

A. Yes, we dug down about, I think it was, twelve feet, sunk way down on the ground; we got down there and the wind blew and we stayed there the entire month.

Q. How much work had you completed by the 15th of May?

A. We had completed about, in the neighborhood probably of 45 feet, 45 or 50 feet of work, that is, open cut and tunnel work at that time.

Q. You first made a little hole, about the line of high tide and found you were too low and extreme high tide, extreme high water, would drive you out?

A. I did not. [218—176]

Q. There was a little work done about the line of high tide?      A. Not to my knowledge.



(Testimony of H. E. Ellis.)

Q. There was a little work done there, wasn't there?

A. I don't know anything of it whatever.

Q. How high above high tide was this work that you and Harry Dean did?

A. Above extreme high tide, I think it is about 62 or 63 feet.

Q. That is where the lower Cliff tunnel afterwards ran in?

A. That they call the 100, the top of the mill.

Q. The one that run in just above the mill?

A. Yes, sir.

Q. Now, you say you did about 45 feet of work—most of it was open out work or stripping the vein?

A. No, there was, I think, it was 25 feet was under cover when we got in. The ground was slate and schist and rock; it was very rocky on the surface and when we got into it, we thought a couple of times we were under ground, but it caved down and we had to start again.

Q. Were you and Dean working there when you started in on the contract of May, 1907?

A. No, we quit some time before.

Q. What time did you quit?

A. Some time the latter part of April, I believe it was.

Q. Then you and Treat and Smith went down to look at the property shortly after that?

A. I don't know when we did go down.

Q. Did you go down before the 15th, before the

(Testimony of H. E. Ellis.)

contract was signed?      A. I couldn't say.

Q. You are not sure whether you did or not?

A. Treat might have, I don't believe Smith did—I am not sure of [219—177] that, though—I made so many trips up and down there at different times.

Q. How did you pay Dean—out if this \$500 you got from Smith and Treat?

A. Part of it, I gave him a part of it; the agreement I had with Dean—along the first of March or the latter part of February I began getting my outfit ready to go down and do the work and he was stopping with me at my cabin and he said, "What are you going to do," and I said, "I am going down to do some work on my ground," and he said, "I want to get away from town; I can't keep from drinking in town and I want to get out, I will go down with you; I have been mining a good many years, thirty or thirty-five years," he said, "and I will help you and am willing to take a chance on it"; and I said, "Harry, I don't know that you will ever get anything out of it, I can't afford to hire you, and I don't want you to go there expecting to be paid for this and not be able to pay it." He said, well, he was willing to take a chance, anything that had that kind of rock in he was willing to take a chance on it, and if I ever sold the ground and was able, I could pay him, otherwise not; he would put that much in anyway; so later I paid him a part, what I could, when we came back up to town, and then later

(Testimony of H. E. Ellis.)

on, after I got this money from Mr. Treat and Mr. Smith, he asked me one day if I could let him have a little money; I was starting to get some ore sacks, I think, and he happened to be with me, and he saw I had some money and wanted to know if he could get a little, said he needed some, I think he intended to leave town, and I paid him a part of this money I owed him.

Q. Did you pay Dean some money?

A. Yes, sir.

Q. How much, do you remember? [220—178]

A. I don't remember, no—I gave him four dollars a day.

Q. That was the agreement, he was to have four dollars a day and board?

A. That was the agreement we came to afterwards—there was no set sum at the time he came down.

Q. Most of the money was paid out of this money you got from Mr. Treat and Mr. Smith?

A. I couldn't say—it was quite a little bit I paid before.

Q. And when you went down there, you got grub and outfit on credit and paid that out the five hundred dollars? A. Not altogether.

Q. Now, in the summer of 1907, there was nothing more done?

A. Yes, there was considerable work done that summer—we worked just above high tide, about where the lower tunnel is at present.

(Testimony of H. E. Ellis.)

Q. This ore that you sent to the Selby smelter, was that taken out by yourself and Harry Dean?

A. Most of it was taken out at that time, yes, sir, by us.

Q. You afterwards went back and got a little more?

A. Yes, from the showing further up the hill, further up on the hill.

Q. In a different place?

A. Yes, probably forty or fifty feet from there.

Q. On the same ledge?

A. The same vein, but a little further up.

Q. About that time, did you bring that ore to Valdez and turn it over to Mr. Smith on the dock?

A. Shortly after we signed this agreement.

Q. Around the first of June then?

A. I couldn't say just what it was—we got some sacks, I don't remember just when it was.

Q. There was nothing further done between yourself on the one [221—179] side, and Treat and Smith on the other, aside from occasional conversations, until you entered into the contract in July, 1908, to incorporate a company to develop this property, was there?

A. That is all I can think of now.

Q. There was nothing in the way of a contract—everything stood as they had when you got returns from the Selby Smelter?      A. I think they did.

Q. Now, you and Mr. Treat and Mr. Smith seem to agree pretty well about the outcome of the incorporation and the efforts to sell stock and get some-

(Testimony of H. E. Ellis.)

body to handle it, either in Valdez or other places—they all came to naught, and the failure outside was due to the failure of the people who took it outside, and then the matter stood that way until the spring of 1909, about the time that the Haines man up at the glacier failed to come to time—Now when did you first meet A. J. Crane?

A. I met him here in Valdez.

Q. When?

A. At the time he was up here looking over the affairs of that company.

Q. How long was it before the fifth of June, of that year?

A. It was a few days before, not very long, possibly a week,—I don't know.

Q. Somewhere from five to ten days probably?

A. Yes, I should think it wasn't before that.

Q. Where did you meet him?

A. I don't remember, I think I met him in the street, I am not sure.

Q. Did somebody introduce you to him?

A. Mr. Rider introduced me to him.

Q. Were Rider and Crane together? [222—180]

A. I believe Mr. Rider and Mr. Crane were together.

Q. Do you remember the circumstance, or on what block you met?

A. No, I was all over town in those days.

Q. You don't remember the exact circumstances meeting Mr. Crane except that you and he and Mr.



(Testimony of H. E. Ellis.)

Rider came together somewhere in Valdez and Mr. Rider introduced you to him?

A. That is strong in my memory, that Mr. Rider introduced him to me, because Mr. Rider had expressed a desire to do so and to get us together on this mining property.

Q. You knew that Mr. Crane was in town for some days before that?

A. I knew that he was here before that—Mr. Rider told me.

Q. You had heard of Mr. Crane?      A. Yes, sir.

Q. Had George Treat ever talked to you about Crane doing anything with him?

A. Not to my remembrance at all.

Q. Had Bob Coles ever talked with you about meeting Crane?

A. I don't know that he did; I know that Coles was driving a dog team for them up at the glacier at that time and I was seeing him almost every day and he was speaking about the work out there—I don't know that he mentioned him in regard to it, he might have mentioned Crane's name.

Q. Did you and Treat and Crane ever talk together on McKinley Street about this property?

A. We possibly did, after the matter had come up, this would be some time later.

Q. You heard Mr. Treat's testimony that he introduced you to Crane, probably somewhere between the postoffice and Seattle Hotel, somewhere near that corner?      A. Yes, I heard it.

Q. This is not correct, is it? [223—181]

(Testimony of H. E. Ellis.)

A. To the best of *knowledge* it is not.

Q. Have you any recollection of talking to Mr. Treat and Mr. Crane in that vicinity?

A. No, I have not— It would be nothing uncommon if I did meet them here in passing by.

Q. Were you introduced to Mr. Crane before you ever talked to either Treat or Smith about the possibility of giving Crane a lease?

A. Yes, I was introduced to him before that.

Q. Mr. Treat and Mr. Smith never discussed the possibility of making a deal with Mr. Crane until after you had become acquainted with Crane?

A. I think not, that is the way I remember, I don't remember that they did.

Q. Was it before or after that you met Crane that Millard went down to your cabin and saw this rock?

A. This was after I met Crane—possibly the next day.

Q. About the next day? A. Yes, sir.

Q. Mr. Millard brought up the subject himself, did he? A. About the ground?

Q. Yes.

A. Yes, he met me on the street and said he had heard that I had some good ore, carrying free gold, and wanted to know if he could see some or it.

Q. And you took him up to the cabin?

A. I took him up to the cabin and showed him.

Q. And you think that was a day or two after you met Crane? A. Probably the next day after.

Q. Did you say anything to Mr. Millard about having some talk to [224—182] Mr. Crane and possi-

(Testimony of H. E. Ellis.)

bly making a deal with him?

A. No, I did not, had no talk with him in that regard; I had just met Mr. Crane, just met him in the street and was introduced to him.

Q. You didn't discuss your property with Crane then, at that time?

A. Not seriously, not to any extent—there may have been some words said by Mr. Rider.

Q. Did you take Mr. Crane out to your house at any time to look at this rock?      A. Yes, sir.

Q. How long after you showed it to Mr. Millard?

A. I think it was the same day or the next morning.

Q. Millard wanted too large an interest?

A. He wanted an interest in the ground other than our first agreement; after we had made our agreement and come to a thorough understanding, as I understood, he wanted control of the ground before he would do anything.

Q. Your first suggestion was a quarter interest?

A. I offered him a quarter interest if he would put up the money to put this proposition on a paying basis, as I thought.

Q. And what did that involve, putting in a mill?

A. That involved putting in a small stamp mill.

Q. And after he looked at the rock and thought it over, he wanted more than fifty per cent?

A. Yes, he wanted at least control of it.

Q. After that how long after that was it, after he went to look at the rock and you talked about a quar-

(Testimony of H. E. Ellis.)

ter interest, how long after was it that he wanted a controlling interest?

A. After he saw the rock and we came to the understanding, the next afternoon, I believe it was the next day, we went down to see [225—183] the ground, probably the next morning—I don't remember the time exactly.

Q. Who went with you when Millard went down there?

A. Mr. Crane and Mr. Rider and I think Mr. Haines and some other gentleman, I don't remember his name.

Q. Mr. Millard, Mr. Crane and Mr. Rider all went the same time? A. Yes, sir.

Q. How long after you met Mr. Crane was it that you went down with him and Mr. Millard and others to see the property, about how many days after?

A. I don't remember just how many days afterwards, after I first met him, I met him in town and it wasn't impressed on my memory very much.

Q. Was it several days before the 5th of June, the date you signed the lease?

A. It could not have been very many days.

Q. Three or four days?

A. It could not have been very many days—I don't remember just the number of days.

Q. When you first talked to Mr. Crane, where was it and was it just between you two?

A. It was between Crane and myself, yes—in his room at the hotel.

Q. That is up at the Buffet?

(Testimony of H. E. Ellis.)

A. No, it is the Seattle Hotel now, upstairs in there—he had a room in there.

Q. That was two or three days before you finally signed up?

A. I couldn't say—it wasn't more than a day or so possibly.

Q. In the meantime had you talked to Mr. Treat and Mr. Smith about the possibility of making a deal with Mr. Crane?

A. Yes, I had spoken to them; as I say everybody in town seemed [226—184] to know about it and there was quite a number of people spoke to me and said they would be glad to see me make a deal with him.

Q. Can you remember when you first talked to Treat or Smith about it and where? Can you remember the circumstances of the conversation?

A. No—it was probably in Mr. Smith's office where we spoke of it together.

Q. You don't remember whether you brought up the subject first or they did? A. No, I do not.

Q. Now, the first time you talked to Mr. Crane in his room at the Seattle Hotel, was there a definite proposition made by either one of you?

A. No, he was wanting to acquire an interest in the property at that time, wanting to buy the property, to get an option to buy the property, rather, buy the entire ground.

Q. And you declined to sell?

A. I told him it wasn't for sale at all.

Q. Which one of you first mentioned a lease?



(Testimony of H. E. Ellis.)

A. I did, I believe; he asked me if there wasn't some other way we couldn't get together as he thought he could handle it and I said, "the only way I can think of might be under a lease, by virtue of a lease."

Q. And was a proposition made by either one of you as to the terms of a lease at that time?

A. "Yes," he said to me, "can't you make me a proposition, what you would consider a fair lease"?

Q. Did you make him one?      A. I did.

Q. What was it? [227—185]

A. I made him a proposition of a lease for a three-year period at 25% net royalty.

Q. And the term was entirely too short?

A. The term was too short to satisfy him.

Q. And he thought the royalty ought to be a little less?

A. Yes, he thought a ten per cent royalty, I believe, was his offer.

Q. Before you left him that day had you come any closer to an agreement?

A. Well, possibly he had come down to twenty years or something like that—he didn't think the royalty was so bad but the time, he wanted a long time, practically the life of a mine, a thirty year period.

Q. He was willing to give a heavy royalty if he could get a long term?

A. Not heavier than 25%—that was the original offer of mine, 25%.

Q. After you and Crane separated, did you on the

(Testimony of H. E. Ellis.)

same day talk to Mr. Treat or Mr. Smith something about this?

A. It is very likely I did mention it, if I met them I did. They would ask me, as others around town would ask me, if I had made any deal.

Q. When did you begin to discuss with Mr. Treat or Mr. Smith the terms you would make to them for their claim?

A. That was in the afternoon of the day the lease was signed.

Q. You never discussed that with them until that day?

A. That was the day that we came to some definite terms—we didn't come to any definite terms with Mr. Crane before that.

Q. You say this conversation with Crane in the Seattle Hotel, this first *oen*, was probably two or three days before you signed up?

A. No, I didn't say that—I said it might have been, I don't know,—a day or so probably. I have no idea just the exact time,—it [228—186] wasn't very long.

Q. Now, after you first told Mr. Treat and Mr. Smith or they talked to you about the proposed Crane lease, didn't you at once begin negotiations with them or they with you as to the terms on which they were to come in on this?

A. I asked them for the terms in the afternoon of the day the lease was signed.

Q. Was that the first time that question had been discussed?

(Testimony of H. E. Ellis.)

A. That was the first time it had been discussed.

Q. Do you know whether or not Mr. Treat had ever talked to Mr. Crane before that time?

A. I couldn't say, he possibly did—he had a chance to meet him around town.

Q. Did either Mr. Crane or Mr. Treat tell you that they had talked together before that afternoon?

A. I don't know that they did, I couldn't say.

Q. Up to the afternoon of June 5th, as far as you know, Mr. Treat and Mr. Smith were not in the deal with Mr. Crane and had not conferred with him?

A. To the best of my knowledge they had not; in fact they had no reason or right to confer with him in regard to it, as I understood it.

Q. You hadn't asked their advice?

A. I had told them, simply stated, that I wouldn't give him an option to buy the property.

Q. Didn't Mr. Crane, prior to the 5th of June, tell you that he was going out on the night of the 5th of June?     A. Yes, I think he did.

Q. And there was some necessity for haste?

A. Yes, sir, if he could do any business he said he would like to [229—187] get it straightened out before he went out.

Q. And at that time the steamers sailed except in rare instances, when they were behind time, the Alaska Steamship Company's boats sailed on the night of the 5th, 12th, 19th and 26th, midnight—do you remember that?     A. No, I do not.

Q. And Mr. Crane was to go out on the boat that night, about midnight?

(Testimony of H. E. Ellis.)

A. It was some time about midnight I think the boat went.

Q. So you knew on the 4th of June that if you made any deal with Mr. Crane, it had to be before midnight of the 5th?

A. Yes,—I knew it had to be made before the boat sailed, rather.

Q. You mentioned to Mr. Crane in some of your conversations that Mr. Smith and Mr. Treat had a mortgage on that property you said? A. Yes, sir.

Q. Was that prior to the 5th of June that you told him that?

A. No, we didn't come to any direct agreement, before I believe it was the 5th of June, the day the thing was straightened up.

Q. You were not overly anxious to make this deal?

A. No, I was not—I would have been glad to make the deal, but I didn't consider he would carry it through.

Q. Wasn't it urged upon you pretty strongly by Treat and Smith and particularly Treat?

A. They spoke to me, as well as a number of others around town spoke to me, and said I ought to try to get it through, it would be such a good thing for this section.

Q. But these others had no interest except the interest of the citizens in the community?

A. And that was the interest that Smith and Treat professed themselves, the interest of the community.

[230—188]

Q. They had also the additional interest—they

(Testimony of H. E. Ellis.)

had some interest in the property—they had their mortgage interest anyway?     A. Yes.

Q. Didn't Treat talk to you at least once or twice during the day and urge you if possible to come to terms with Crane?

A. Treat hunted me up and asked me to go back and see Crane.

Q. He suggested in the afternoon some time that Crane was the first live one he had really gotten hold of on a mining deal.

A. I couldn't say he did, no, but he thought Crane was in position to carry this deal out, any deal he went into.

Q. He put it up to you that he was the most promising prospect for doing something that you had ever had.

A. Not that I know of—he did not, but he thought it was a good chance.

Q. What time in the afternoon, if you remember, did you talk to Treat, the afternoon of the 5th of June?

A. I think it was possibly about two o'clock.

Q. At that time had you arrived very nearly at a conclusion with Crane as to the terms of the proposed lease?     A. Somewhat, yes, sir.

Q. That is you had agreed practically upon the royalty.

A. He hadn't agreed to the time—there was a little difference in the time, the length of time that the lease was to run, and he also wanted a little less royalty; he thought, in fact he said that he thought



(Testimony of H. E. Ellis.)

they ought to be allowed a year, I believe, before he paid any royalty—that was one of his contentions.

Q. Can you remember about what time in the day it was that you and Crane finally agreed upon the length of the term and the amount of the royalty?

A. I think it was about five. [231—189]

Q. You think it was about five o'clock?

A. I think it was about five o'clock in the evening.

Q. That was after you had talked to Treat?

A. That was after I had talked to Treat and he had given me the letter.

Q. Did you then immediately communicate this proposition to either Treat or Smith?

A. Yes, and told Mr. Smith about the arrangement, we had, that is, the agreement we had come to, so he could draw up the papers and have them ready to sign before Crane went out that evening—I don't remember just the hour, but I think it was probably about five o'clock.

Q. About five o'clock you finally agreed upon the terms with Crane?

A. Yes, sir, that is the idea.

Q. And then did you go almost immediately to Mr. Smith's office and tell him to draw the papers?

A. Yes, sir.

Q. Was Mr. Treat there at the time?

A. Yes, sir, Mr. Treat was there at the time.

Q. And you talked the whole thing over with them before dinner? A. Yes, sir.

Q. And in that conversation did you discuss your settlement with them on their interest?

(Testimony of H. E. Ellis.)

A. Yes, sir, we talked of the matter, in regard to their accepting this 15% and Mr. Smith was to act as my attorney.

Q. Prior to that conversation, which was around about five o'clock had you had any general discussion with either Smith or Treat as to what they were to accept?

A. Yes, I asked them in Mr. Smith's office, I think it was probably two o'clock—I had been up to see Mr. Crane and we had come to [232—190] some agreement—in the neighborhood of it anyway.

Q. You testified in your direct examination that you had one or two conversations with Treat and Smith and they wanted a great deal more than you thought they were entitled to? A. Yes, sir.

Q. And you insisted that you couldn't think of giving up that much—was that on the same day or prior to that time?

A. That was in the afternoon, after I had talked to Mr. Crane.

Q. As I understand you then, nearly all the conversation and the negotiations you had with Treat and Smith as to their interest in this property or in the lease, if one was made, was on the 5th of June?

A. Yes, they were very urgent, because they thought that Crane was going out and they were desirous of getting something put through.

Q. They were very anxious to have something put through on some basis? A. Yes, sir:

Q. They didn't want Crane to escape?

A. That seems to be it.

(Testimony of H. E. Ellis.)

Q. But prior to that time, you had had no talk with Treat or Smith as to what they were to have in case a deal was made with Crane.

A. No, we didn't come to any discussion of that question, because I never thought we would make any deal with Crane, because he insisted on having a controlling interest in the property or the entire interest.

Q. This first talk was about three o'clock on the 5th of June, when they asked for more than they were entitled to and you told them in reference to their proposition, not by a dam-sight [233—191] or something to that effect— Did you before that conversation terminated come any nearer to an agreement with them as to what they would take?

A. No, sir, I left them shortly after—I told them I couldn't give them or wouldn't give them a 20% interest in the property.

Q. Now, then, you came back, after you had practically arrived at a tentative agreement with Crane, you came to Smith's office and found Treat there, about five o'clock and then you three thrashed out the question of what they were to get.

A. No, we thrashed that out before; Mr. Treat had given me this letter in regard to this and he told me that—

Q. First, what time of the day did he give you the letter?

A. That was during the afternoon—Mr. Treat came and hunted me up and had me go back and see Crane and it was at that time he said about what.

(Testimony of H. E. Ellis.)

he would be willing to do and he would go and see Smith and he went down to Smith's office and they discussed the thing and he brought me this letter. In the meantime I had been in to see Crane.

Q. He brought you that letter—that was about five o'clock then, just after you had seen Crane?

A. Just after I had seen Crane—I think it was earlier than that.

Q. And Treat gave you this letter on the street?

A. Yes, sir, Treat gave me this letter on the street.

Q. And you then went down to Smith's office?

A. No, after he gave me the letter, I went to see Crane.

Q. It was just before you saw Crane the last time?

A. Yes; we came to an agreement then and Crane had me go down and tell Smith what the agreement was, so he could draw up the papers and have them ready for him to sign, and I went back and told Crane the time he was to come to sign them. [234—192]

Q. Now, this letter, exhibit 9, reading—We will accept fifteen per cent net of royalty on lease of property provided the contract of *least* is satisfactory. That, of course, would have to be settled afterwards, whether it was satisfactory or not.

A. Mr. Smith drew it up—he was to decide whether it was satisfactory or not.

Q. And this proposition of \$12,500 cash net was impossible at that time?

A. I couldn't get that much of a payment on it, so I supposed, if I made any deal to get a payment down

(Testimony of H. E. Ellis.)

on any of the property.

Q. Now, after dinner, you came into Smith's office, did you, about seven or half-past seven?

A. I think in that neighborhood.

Q. Who was there when you arrived?

A. Why, Mr. Smith was there in his office.

Q. Was anybody there but Mr. Smith when you went in?

A. I don't think so, not to my memory.

Q. Had Mr. Smith prepared the lease already, at that time?

A. I believe it was finished, or in the hands of the typewriter, am not sure.

Q. You don't know whether Mrs. Lockhart was there at the time?

A. She was probably in the other room.

Q. Did you read this over with Mr. Smith, this option agreement with Crane—you can look at it again if you want to—the one of June 5th, 1909, by and between H. E. Ellis, Geo. C. Treat and Edmund Smith, parties of the first part, all of Valdez, Alaska, and A. J. Crane of Seattle, Washington, party of the second part, etc.? (Handing witness Plaintiff's Exhibit "B.")

A. Yes, we read it over.

Q. You read it over?      A. Yes, sir. [235—193]

Q. And discussed it?      A. Yes, sir.

Q. And there was no further agreement with Mr. Treat and Mr. Smith at that time than is contained in this contract, was there?

A. Only that Mr. Smith agreed to act as my attor-



(Testimony of H. E. Ellis.)

ney in all matters pertaining to the company, in all matters pertaining to this property.

Q. And was that a part of the conversation?

A. As a part of this 15% royalty, had been agreed upon before we had discussed it before and he was to do that as a part of it.

Q. This you remember is a six-year lease, the same the Millard lease?      A. Yes, sir.

Q. Now, what time was that signed up that night?

A. Well, I think possibly something about half-past seven.

Q. You didn't talk very long about it?

A. Not a great while; we sat and talked and discussed the probabilities of the mine in general and that section talked quite a little while—I don't know whether it was just after or just before we signed it.

Q. You have read this lease, this option agreement lately, given to Mr. Crane?      A. No, I have not.

Q. You are aware of the fact that it runs from all three of you to Mr. A. J. Crane?

A. As parties of the first part, yes, to Mr. Crane.

Q. Was there any discussion between you and Mr. Smith as to the meaning of any of these various paragraphs other than the term of the lease and the amount of the royalty?      [236—194]

A. Why there probably was, I don't remember just now just what there was.

Q. The second paragraph reads this way—

That for and in consideration of the sum of One Dollar in hand paid by the *part* of the second part to the parties of the first part and the

(Testimony of H. E. Ellis.)

carrying out of the further covenants herein mentioned the parties of the first part hereby give and grant unto the party of the second part the exclusive right, privilege and option to lease eight lode mining claims situated on the North side of Valdez Bay, known as the Mystic Group, Territory of Alaska, located by H. E. Ellis, one of the parties of the first part.

Why did all three of you sign that if you owned the whole property?

A. Because they were to receive an interest in the royalty.

Q. That was the only reason, was it?

A. As far as I know, it was.

Q. *When* did you begin negotiating with Mr. Millard again? A. I did not.

Q. He bought the Crane lease or the Crane option?

A. Yes, sir.

Q. And had all the rights under it—didn't you have some discussion with Mr. Millard as to making a new lease with him?

A. Yes, we got together in the evening of the day the time it was to expire, I believe, and talked the matter over, or rather outlined it—Mr. Smith, I believe, took notes.

Q. What time of the day was this lease of July 23d with Millard signed?

A. I don't just remember what time of the day it was signed, I know we got together in the evening of the day the option was to expire and discussed it; it might have been signed that evening, but it was

(Testimony of H. E. Ellis.)

probably the next day. I had been across the Bay to Solomon Gulch and couldn't get back by boat so I walked around and got in here that evening, and my remembrance of it [237—195] as it was rather late in the evening when I got in there.

Q. To refresh your memory I will ask you if it is true that the Crane option is silent as to the date of its expiration but the verbal agreement was that it was for thirty days?

A. I really don't remember whether it is or not, I haven't read it over for some time, I don't remember really—it is a long time since I read it.

Q. What is your impression as to the time Crane was given? A. Thirty days was the idea I had.

Q. That would be until the 5th of July?

A. Yes, sir.

Q. Do you remember a cable coming from Crane or somebody representing him asking for thirty days more?

A. No, I do not—it did not come to me at any rate.

Q. Weren't you informed that a cable had come?

A. If it came I probably saw it.

Q. You granted an extension of time of thirty days, did you not? A. I believe we did.

Q. That would carry it until about the 4th of August? A. Yes, sir.

Q. Now, on the 23d of July, you think you signed this up in the evening? A. Yes, sir.

Q. Had you discussed thoroughly with Smith and Treat the provisions of this lease?

A. We discussed it after it was drawn up before

(Testimony of H. E. Ellis.)

Crane came into the office.

Q. I mean the Millard lease, on the 23d of July?

A. We had a discussion in Mr. Smith's office after the lease was drawn up, before Mr. Millard came in. We talked the matter over, the three of us. [238—196]

Q. Did you discuss all the important points in it?

A. That occurred to me as being important—I might have missed some of them, the chances are I did.

Q. Did you take a copy and read it?

A. Yes, he used the original and allowed Treat and I each to take a copy and read it.

Q. You read it for yourself? A. Yes, sir.

Q. What did you say, if anything, at the statement in the first paragraph—

“This indenture, made this 23d day of July, A. D. 1909, between H. E. Ellis, four-fifths owner, George C. Treat, and Edmund Smith, each owning ten (10) per cent, all of Valdez, Alaska, parties of the first part and lessors, and B. F. Millard, Trustee, of Valdez, Alaska,” etc.

What was your understanding of that provision?

A. I objected immediately to that provision, to that way of expressing the ownership.

Q. Did you ask to have that stricken out?

A. I asked why it should be put in and Mr. Smith said he thought it would be better to put it in that way as owners, he could better protect the property and look after their interest as well as mine and while acting as my attorney in the matter he thought it

(Testimony of H. E. Ellis.)

would be better to put it that way.

Q. You had previous experience in the way of leasing mining properties?

A. I didn't have much experience in business matters.

Q. Didn't you understand at that time as you undoubtedly do now, that it never helps a legal contract to make a false statement in it?

A. I understand it more thoroughly now than I did at that time.

Q. At that time you say there was a specific agreement between [239—197] yourself and Mr. Treat and Mr. Smith that they were to take 15% of the royalties under the Crane lease and you understood the same agreement was carried into the Millard lease, that they were to take 15% of the royalties derived from that property during the six-year term, as liquidation in full of all their demands?

A. That was my idea and thorough understanding between all of us.

Q. Then why, if that was the agreement and thorough understanding of all the parties didn't the lease say H. E. Ellis, owner of 85%, George C. Treat and Edmund Smith each owning 7½%?

A. I don't remember Mr. Smith's explanation of that at the time, but he undoubtedly made a good one, that is, something that would satisfy me—I thought he was a friend of mine and doing the best he could for my interest and acting in a legal way for me in drawing this paper up. I also considered Treat a very warm personal friend at the time and I didn't



(Testimony of H. E. Ellis.)

think that either one would try to—

Q. Didn't it appear to you strange that if you agreed in any event that all they were to get out of this property was 15% of the royalty, that they should incorporate in this lease a provision that they should be named as the owners of 20%?

A. Yes, that they should be named in any per cent of ownership, and I discussed the thing with Mr. Smith in that light.

Q. Didn't that arouse any suspicion in your mind—that while they were willing to take 15% of the royalties, they wanted you to sign a document that declared they owned one-fifth of the ground?

A. Yes, it did, but *we* offered a very smooth explanation of that in that way.

Q. That explanation that he gave didn't make *much an* indelible impression upon your mind that you can tell now what it was? [240—198]

Yes, he said that in fact he didn't matter what per cent—he gave me the idea it didn't matter what percentage he claimed or the document expressed as the percentage they owned, that he simply put that in that he could better represent me and themselves, acting as my attorney, especially if I was going to be absent, which I was—he brought that up, as I was absent a great deal of the time, out in the hills prospecting, he could look after my interest better with the company.

Q. He didn't give any reason for making it 20% instead of 15%?

A. Not that I remember, only the matter was im-

(Testimony of H. E. Ellis.)

material as to what per cent it should be when it was so thoroughly understood between us that he owned no interest in the property except the 15% of the royalty.

Q. (By the COURT.) Why was Treat's name put in there? If Smith's name was put in on that theory that he could protect you? Was anything said why Treat was put in as the owner then?

A. I say the two of them—I asked why they should be put in and that was my reply, it was put in for that purpose, that they should better be able to protect my interest as well as their own.

Q. That was the sole reason. Now, you have a fair education, have you not?

A. Not so extraordinary.

Q. You at that time had enough business experience to know that when a man asks you to make a statement that both you and he agree is untrue in a document of such solemnity as a deed or lease that there must be something ulterior reasons for it?

A. It never struck me at the time that there was any ulterior reason. I had known Mr. Smith and Mr. Treat for some time and thought very highly of them and it didn't strike me at all that there was any ulterior reason, especially with this explanation.

[241—199]

Q. Now, you read this clear through, did you, the Millard lease? A. I did, at the time.

Q. You were aware of the fact that it refers repeatedly to you three gentlemen named, as lessors and owners, etc.—it refers to you as owners, you are

(Testimony of H. E. Ellis.)

aware of that, you know that?

A. Yes, sir, the same as it does in the beginning of the lease.

Q. It calls for the return of the property to you three at the expiration of the lease, does it not?

A. I don't remember just how it does read.

Q. And on Smith's statement of this proposition, which you now understand was so remarkable, that it was *absolute* necessary for a man who was going to act as your agent in regard to a lease of mining property that he should be named as one of the owners, when in fact he was not, on the strength of that statement you signed this document?

A. That it was not absolutely necessary, but it would greatly favor their handling of it, if they were known as part owners of the property.

Q. It didn't occur to any of you that you could give them, either Smith or Treat, or both of them, a power of attorney?

A. It wasn't mentioned at the time, at least, and I didn't think of it.

Q. In this conversation when you finally settled on the 15% royalty, wasn't their claim pretty thoroughly discussed, their claim against you?

A. At the time I refused to allow them the 20%.

Q. Yes—that was before you made the Crane lease?

A. Yes, sir.

Q. You didn't discuss it again in talking about the Millard lease?

A. Only they were to accept the 15% in full liquidation.

(Testimony of H. E. Ellis.)

Q. You are aware that the articles of incorporation which you [242—200] three had signed in 1908, gave to Treat and Smith 20% of the property, did it not?

A. Yes, sir, it would, if it had been carried out.

Q. That was still in existence until all of you agree to abrogate it? A. Yes, sir.

Q. Then at the time you were negotiating as to the Crane lease, Treat and Smith owned one-fifth of the property?

A. They had agreed to drop the incorporation proposition quite some time before—that had fallen through.

Q. That was a dead one before that time?

A. Yes, sir, they agreed to drop that and to consider that the mortgage was in full force, the mortgage against the property.

Q. Strictly speaking, under the incorporation agreement, they would have one-quarter, because one-fifth of the stock was to be left in the treasury—you got 60% and they got 20% and they were, of course, to have an equal interest in the proceeds of the treasury stock?

A. The proceeds of the sale of the treasury stock were to be applied only to the development of the mine.

Q. But that would increase the value of their interest in the same proportion as yours?

A. Yes, sir.

Q. So the relation of their interest to yours was one to three under that agreement to incorporate—

(Testimony of H. E. Ellis.)

now you wish the Court to understand that when you had such an agreement as that—it had been verbally agreed to drop it, but as far as the papers were concerned, it will *still in* existence up to just prior to the signing of the Crane lease—you wish the Court to understand that although they had this corporation agreement and [243—201] it was still in existence, so far as the papers were concerned, which gave them one-third as much interest as you had, and they also had a first mortgage on the ground, which they could foreclose at any time, that they were willing to give it up and take a much smaller interest in a six-year lease?

A. Yes, they were perfectly willing because they were perfectly satisfied they could not carry through the corporate agreement and get their interest in that way.

Q. They were willing to accept the 15% and Smith was willing to act as your attorney gratis?

A. He offered his services gratis.

Q. Now, when you signed these various notices to the Company, to the Cliff, which were introduced here in evidence yesterday, in which yourself and Treat and Smith are described as owners—did you ever protest against that form of notice?

A. No, sir, I did not; that was in line with our discussions at the time of the signing of this lease, it was right in line with it; he was carrying out the agreement we arrived at at that time, that he was to act for me, to draw up papers and act for me, as my attorney, in regard to the Cliff Company.



(Testimony of H. E. Ellis.)

Q. You said a little while ago in answer to Mr. Ganty's questions, if I remember your testimony, that you never knew that they asserted any claim to an interest in the property until you got Mr. Treat's letter last winter, but you said you did not consider that a demand.

A. I did not consider that a demand, no, sir, on the property.

Q. So you did not believe they asserted any interest in this property up to the time they filed this suit against you?

A. No, sir, I did not understand it that way—I understood, I always understood, that their interest was in the net royalty from the lease,—that is all the understanding I ever had in [244—202] regard to it.

Q. Mr. Bunnell was your attorney generally, was he not, that is in some matters.

A. No, sir, not that I can recall.

Q. You employed him sometimes and Mr. Ganty sometimes?

A. Mr. Ganty usually did the small business I had—I didn't have very much.

Q. Did you ever consult Mr. Bunnell about any difficulty or difference with Treat and Smith on the ownership of this property?

A. At the time the suit was on in the Gold Bluff case, the Gold Bluff Mining Company, he mentioned the fact that—he asked me—he said, don't they claim an interest in this? I said, "well, I understand that Mr. Smith sold an interest to Archibald, but" I said,

(Testimony of H. E. Ellis.)

"I don't understand how he could, he didn't have anything to sell, unless it was his interest in the royalties," I said, "he might have sold him that." "Well," Mr. Bunnell said, "there was no one come forward in this case to deny your rights, this should bar them from it ever coming up."

Q. Didn't you know as a matter of fact about two years ago that this claim was going to be asserted or was already asserted?

A. That was about the time, just as I say, Mr. Bunnell brought the thing up, Mr. Kraemer had also told me that I had a new partner in the ground in the claims.

Q. If Mr. Bunnell two years ago or nearly so consulted other attorneys in this town as to their option of the real meaning of that Millard lease, he did it without any suggestion from you?

A. Yes, sir, without any suggestion from me.

Q. You didn't know that at that time Mr. Bunnell was agitating himself somewhat about the claim of Treat and Smith to an ownership of one-fifth of this ground?

A. Only as I stated—he enquired of me if they did own an interest. [245—203]

Q. You never employed Mr. Bunnell to look up this question of title and inform you as to your rights and his opinion? A. No, sir, I did not.

Q. Now, after this lease was given, did you ever have any conversation with Mr. Treat and Mr. Smith as to what would be done with the ground at the expiration of the lease?

(Testimony of H. E. Ellis.)

A. Yes, we had several discussions on the subject. They said they would like to go in with me at the end of this lease, become interested with me in mining it and also Mr. Lathrop said the same thing.

Q. They would like to become interested?

A. Yes, sir.

Q. They didn't assert then that they had an interest?

A. No, they would like to become interested with me in handling the property after the expiration of the lease—you probably won't want to stay here.

Q. You state positively from the 5th of June, 1908, when the agreement was made that they would take 15% of the royalties paid under the Crane lease until you had notice of the filing of this suit, there never was any discussion or talk between yourself and either Mr. Treat or Mr. Smith which indicated that they claimed ownership.

A. Not to my knowledge.

Q. You have no recollection?

A. I don't think there was at any time.

Q. Is it not a fact that on the 5th of June, 1909, when you and Mr. Treat were discussing back and forth the terms on which they would get an interest in the Crane lease, that they specifically stated, for the sake of getting the lease which was in very much doubt at that time, because Mr. Crane was [246—204] only going to remain in town a few hours, in order to hurry you up and get the lease signed before Crane left town, they agreed to take 15% of the royalties, that they positively and unequivocally

(Testimony of H. E. Ellis.)

stated to you that they intended to and expected to retain their one-fifth interest in the ground.

A. No, sir.

Q. There was no such statement as that at all?

A. No, sir.

Q. There was no possibility of a misunderstanding at the time?

A. I don't see how there could possibly have been.

Q. One of two things is true, is it not, either that they unequivocally agreed to accept 15% of the royalties under the Crane lease for six years in settlement of every possible claim they had against you, including the Treat mortgage against your little house in town, either that statement is true or it is true that they still claimed one-fifth of the ground but agreed to waive part of the royalty during the terms of the lease—one of those things is true, is it not?

A. It is true that they agreed to accept 15% of the royalties as full payment for all their claims, all my indebtedness to them.

Q. At the time you were only giving Mr. Crane an option?

A. Yes, sir; and in talking this over I made mention of the fact, that I did not think that Crane would be able to carry out his agreement and I said, "Of course, I will still owe you the money, I will still be indebted to you for the money and the mortgage on the property is sufficient to cover that."

Q. Now, at that time all you or Mr. Treat or Mr. Smith or anybody else knew about this property was

(Testimony of H. E. Ellis.)

that you had a little work done on a little ledge that showed very great values—there was no assurance that any time within the six years, if Mr. [247—205] Crane started on the work that there would be any royalty paid, was there?

A. There was the assurance that if the property continued to develop as it had and was worked in a workmanlike manner, that it would pay a big royalty.

Q. There are a great many mines that promise to pay a big royalty that never do—there are about a dozen of them in Valdez, in the Valdez district, that have been a sure thing and have never paid anything? A. Not to my knowledge, there is not.

Q. That is true in every mining camp, is it not?

A. I don't know.

Q. So that Treat and Smith, on the 5th of June, were willing to give up their \$760, their claim for \$760, their claim of an interest in the ground which they had theretofore had or claimed to have had, to give that up for a gamble of 15% of the royalties that A. J. Crane might take out of the ground?

A. They were willing to do that—they didn't consider it a gamble.

Q. That is what they agreed to do?

A. They agreed to accept 15% of the net royalties.

Q. And if Crane or Millard, under this lease, had worked for six years and had just about taken out running expenses and no royalty had ever been paid, Mr. Treat and Mr. Smith would never have received any royalty but their \$760 due from you would have



(Testimony of H. E. Ellis.)

been paid by the terms of that lease?

A. Would have been paid?

Q. Yes—according to your statement the agreement expressly was that they were to take 15% of the royalties out of the Crane lease, and afterwards the Millard lease, for their indebtedness.

A. They had my word that I would still be good for the money that I owed them. [248—206]

Q. How about these amended location notices—you saw them, did you?

A. I have no remembrance of ever seeing them.

Q. You heard some talk about them?

A. Yes—they were to be posted by Mr. Storm.

Q. Mr. Smith is mistaken when he says that he and Mr. Treat signed them up and gave them to you to be signed by you and posted on the ground?

A. As far as I know he is about giving them to me—I have no remembrance of having them given to me.

Q. Now, about the payment of these expenses for the Gold Bluff contest—that Gold Bluff case was settled just before you went outside two years ago?

A. Yes, sir.

Q. So it was all over before you went away?

A. Yes, sir.

Q. Were any of the bills for conducting the case presented to you before you left?

A. Frank Nelson had carried Storm back and forth a time or two, I believe, during the surveying and he presented me with a bill or two.

Q. Haven't you ever been shown Mr. Storm's bill

(Testimony of H. E. Ellis.)

for surveying expenses?

A. Mr. Storm mentioned it to me once or twice and I referred him to the Cliff Mining Company, that they had instituted the suit and were to pay all the expenses.

Q. The company did not institute the suit?

A. It had been, under an agreement that they were to stand the expense.

Q. With whom was that agreement made?

A. Made with Mr. Lathrop.

Q. Did he have authority to make it? [249—207]

A. To the best of my knowledge he did.

Q. There was a board of directors of the Cliff Mining Company.

A. He had charge of their business there and it was understood by me that what Mr. Lathrop said went.

Q. Mr. Millard was president of the company, was he not? A. He probably was.

Q. Did Mr. Lathrop give you anything in writing to the effect that the Cliff Mining Company would pay? A. No, he gave me his word.

Q. And you assumed he had the authority?

A. I assumed he had the authority and he also went across the street and told Mr. Bunnell to start the proceedings.

Q. When did you first learn that the Cliff Mining Company had charged all this back to you?

A. I didn't learn that they had actually charged it back until this summer; at the time there was some discussion about these bills—it was shortly after,

(Testimony of H. E. Ellis.)

about the time that this suit was completed, about the time the settlement was made.

Q. Did your brother notify you anything about it while you were gone?

A. I don't remember that he ever did.

Q. Have you ever offered to repay to Mr. Treat and Mr. Smith the money that was charged to them?

A. No, sir, I surely have not.

Q. Now, you know enough about law certainly to know that even though the Cliff Mining Company was absolutely bound to defend that suit that you, as the owner of the title, if they neglected that duty, would be obliged to do it, in order to protect yourself?

A. I would have gone ahead and tried to carry it, tried to protect myself, if they had refused, but they didn't refuse. [250—208]

Q. That is to say you knew if the Cliff Mining Company defaulted and you defaulted that the party you were up against would take judgment?

A. Yes, sir.

Q. And the only reason you had that caused you to leave this to the Cliff Mining Company was Mr. Lathrop's statement?

A. Mr. Lathrop's statement and the general wording of the lease.

Q. At the time you talked about the survey, sending Mr. Storm down there, was there any discussion about who was to pay for that?

A. There was some discussion as to the company assuming part of it and the rest being charged—I

(Testimony of H. E. Ellis.)

understand it was to be charged to the mining and milling expense, which would be divided.

Q. Who told you that?

A. I don't remember, that was my understanding of it.

Q. You don't remember any specific conversation.

A. I think probably it was taken up with Mr. Millard at that time.

Q. That is just an impression you have?

A. That is just an impression I have.

Q. You don't remember distinctly any talk?

A. No.

Q. Wasn't the first proposition to charge it to the royalty account.

A. I don't remember that; the proposition when it first came up was to carry the thing through to a patent; which was to be charged possibly to me—I don't remember now—the discussion, we never got that far with it anyhow, so it dropped out of my mind what the discussion was.

Q. Going back for a moment to the time when you were negotiating with Mr. Crane, in the first week in June, 1909—you are positive [251—209] that Mr. Treat took no part in any of these negotiations?

A. Not with Mr. Crane and I, at least I have no remembrance of it.

Q. You are positive you did not confer with Mr. Treat and Mr. Smith several times about it and tell them how you were getting on until the last time?

A. I discussed the matter with them and with a number of other parties around town that had in-

(Testimony of H. E. Ellis.)

quired of me, not only them but others. Mr. Crane had mentioned it to several other parties and they asked me how we were progressing, if we had made any arrangements and one thing and another like that; they took a good deal of interest in getting the thing started—they were all interested in the town and wanted to see it go ahead.

Mr. RITCHIE.—That's all.

Witness excused. [252—210]

**[Testimony of H. L. Rider, for Defendant.]**

H. L. RIDER, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. GANTY.

Q. What is your name? A. H. L. Rider.

Q. Where do you reside? A. Valdez, Alaska.

Q. What is your occupation?

A. Millwright and millman, amalgamator.

Q. When did you first come to Valdez?

A. 1907.

Q. State what you were doing when you first came here, what you did after you first got here.

A. I came to Valdez first and then went to Knights Island and returned to Valdez.

Q. Were you during that summer working on the glacier here for the Haines people?

A. Not that summer, not in 1907—that was in 1909 when I was employed out on the glacier for Haines.

Q. You are sure it was 1909?

A. I am quite positive it was 1909.

Q. You were working for Haines? What were you doing?



(Testimony of H. E. Ellis.)

A. I was hired in Seattle to take charge of the erection of a mill which they had purchased in Seattle.

Q. What did they do with the mill?

A. They disposed of it to the Cliff Leasing or Mining Company.

Q. Do you know Mr. A. J. Crane? [253—211]

A. Yes, sir.

Q. When did you first meet him?

A. It was about the first of June, probably the last of May or the first of June, 1909.

Q. Were you acquainted with at that time or did you know of the Cliff Mining property, the property that is now the Cliff mine?

A. I had been informed there was a prospect on Valdez Bay by a party, Mr. Dean.

Q. Who was the reputed owner at that time, if you know? A. Mr. Ellis.

Q. You knew that at that time?

A. I was told that the property belonged to Mr. Ellis.

Q. State, if you know how Mr. Crane came to hear about this.

A. Mr. Crane came up to the glacier where we were camped at that time and seeing the conditions up there, he was not satisfied with them, therefore he concluded to shut down the operations and asked me if I knew of any place where he could dispose of the mill which they had already purchased and I told him I did not know positively, but I had heard of a prospect known as the Cliff, owned by Mr. Ellis, that

(Testimony of H. L. Rider.)

had a very good showing and it was possible he might make some deal with them. Mr. Crane said he would look into the matter and we came down to Valdez, where I am quite sure I introduced him to Mr. Ellis and I don't know of any further transaction that day, that I know anything about; I think I went back to the glacier and he returned up there, informing me that he had made arrangements to go down to the mine and wishes me to go with him, and also Mr. White, who was assayer for the company, and examine the property, which we did; we went down on the Gelena with Mr. Millard and made quite a thorough examination of the property, took the samples [254—212] up to our own assay office and ran them, gave Mr. Crane the returns and they were satisfactory to him and he immediately started negotiations for a lease.

Q. In what capacity did you go down there?

A. I was told to go as an experienced miner, to take samples and examine the property.

Q. That is practically all you know in connection with the matter?

A. Practically so—that is the way Mr. Crane came to know the Cliff mine, etc., and who went down and took the samples, etc.,—that is about all I know of interest.

Q. You had no other conversations with any of the parties to this action at that time after you introduced Mr. Crane to Mr. Ellis, that is to Mr. Treat or Mr. Smith?      A. I don't think so.

Mr. GANTY.—That's all.

(Testimony of H. L. Rider.)

Cross-examination by Mr. RITCHIE.

Q. Where did you and Crane meet with Mr. Ellis?

A. He was on the streets of Valdez; I think Mr. Crane's room was in the Seattle Hotel, but I think we were out on the street—I came in from the glacier with him.

Q. Do you know whether Mr. Crane and Mr. Ellis had met before?

A. I don't know as they had—I introduced them.

Q. You don't know for a certainty whether or not they had met before?

A. I certainly do not, but I introduced them.

Q. You very often have been introduced yourself to a man you have met before?      A. Yes, sir.

Q. Did you take any part in any of the conversation or did you just leave them? [255—213]

A. I introduced them and told him Mr. Ellis was the man owning the prospect down the Bay, which I had reference to, had told him about.

Q. Was there any further talk in your presence between them?

A. No, sir; not Ellis and Crane and myself.

Q. Did you meet Crane and Ellis at any time afterwards and take part in any talk about this matter?

A. No the three of us—Crane came repeatedly and spoke to me.

Q. And asked your advice?

A. And asked my advice in some things, in certain things.

Q. You talked no further to Ellis?

(Testimony of H. L. Rider.)

A. Nothing at that time, no, sir.

Q. Where are you working now?

A. I am not working at present—I have been down at the Cliff Mine working about two months and a half, but have not been there for six weeks or more.

Witness excused.

By the COURT.—There is one matter I want to ask Mr. Ellis.

[**Testimony of H. E. Ellis (Recalled by the Court).**]

H. E. ELLIS, recalled by the COURT.

Q. Mr. Ellis, you left Valdez, you say, about December, 1913?      A. Yes, sir.

Q. And you were gone until May of this year?

A. Some time the latter part of May, 1915.

Q. During that time have you kept in touch with these Cliff matters through your brother, who was your agent here?

A. Not very well; he was not very good to write letters, and he didn't keep me very well posted.

Q. Has Mr. Ganty during that time represented you as attorney and have you had correspondence with him? [256—214]

A. Yes, I had one or two letters from him in regard to it.

Q. You were interested in finding out how you stood with the Cliff Company?

A. Yes, sir; I was.

Q. When they shut down in August, 1914, surrendered their lease, you were interested in knowing

(Testimony of H. E. Ellis.)

how the matter stood and how you stood with them?

A. Yes, sir.

Q. Did you get a statement?

A. There were statements forwarded to the States. I was probably in Denver, Colorado, at that time—I had just some from the east and these statements were forwarded to me in the east, and they thought when I was back there that I was getting considerably better than I had been; I was quite sick, and they thought I was coming right through and they forwarded back to me to Valdez my mail and papers and they were quite a good deal of time on the road and I got some of them here in town and some were forwarded to me just before I got home.

Q. This statement dated April, 1914, regarding this bill of costs in the adverse suit and the survey and all these things, was that forwarded by your brother or any one else?

A. I don't think it was; if it was, it was one that was returned here and I didn't get it until I got back to Valdez.

Q. A matter of that importance, a matter of a charge against you of a thousand dollars or so, wouldn't that be called to your attention for a whole year?

A. I don't think—I don't know just when these papers, these statements were made out.

Q. That was made out and delivered, so Mr. Kraemer says, in April, 1914, aren't you able to say whether, through your brother or [257—215]



(Testimony of H. E. Ellis.)

through Mr. Ganty, or anyone else, you received that?

A. I received that, I think, after I returned to Valdez.

Q. Then the matter of this charge of a thousand dollars or so against you, you did not know anything about for a year or so after it was rendered to your brother as your agent?

A. I understood, before I left—Mr. Storm had brought the matter to my attention, and I had referred him to the Cliff Mining Company for settlement.

Q. Didn't you know the Cliff Mining Company had deducted it from your royalties until a year after it was done?

A. No, sir; that was about the time—about a year afterwards.

Q. Is your brother here now?

A. No, sir; he is in Colorado.

Q. Do you know whether he did receive this in April, 1914?      A. No, I do not.

Mr. GANTY.—I intend to clear up this very point—I intend to introduce evidence to clear it up.  
Witness excused.

Mr. GANTY.—We will call Mr. Hughes. [258—216.]

**[Testimony of John Hughes, for Defendant.]**

JOHN HUGHES, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. GANTY.

Q. What is your name?      A. John Hughes.

(Testimony of John Hughes.)

Q. You are acquainted with all the parties to this suit, I believe?

A. Yes, I have a slight acquainted with most of them, quite well acquainted with some of them.

Q. How long have you resided here?

A. About twelve years.

Q. What is your occupation?

A. Prospecting and mining.

Q. I will ask you if you had occasion to go to the Cliff Mine about June or July, 1914?

A. Yes, it was somewhere about July 6, 1914; I met Mr. Will Ellis in town, brother to H. E. Ellis, and he told me his brother was in Denver under a doctor's care, very sick, and the Cliff had quit; that Mr. McDougall, the man in charge, had gone to the Gold King and he wished me to go down there and keep track of it and see that nothing was removed from there. I went there and arrived there the 8th of July.

Q. State what you did and who went with you.

A. Will Ellis and I went down there and we found there were two or three men working there, and there were several women living there and Mr. Ellis told them, a man named Minnick apparently was in charge, he told them he had come down to take charge of the property for his brother, as his brother's agent, and he was intending to leave me there in charge of it. Minnick delivered up the keys, took me around, and showed me the mining equipment, machinery, mill, etc., and all the place, and [259—217] Mr. Ellis took me to the mess-

(Testimony of John Hughes.)

house and told me I could sleep there and cook there until he relieved me, so I stayed there from that time on until close to Thanksgiving, within a few days of Thanksgiving. He gave me orders not to allow anything to get away, to be taken off the ground, but to use anything I want for working on the ground—he showed me several places he wanted prospected.

Q. In what capacity did he give you these orders?

A. As the agent of his brother—I know he was known as the agent; I had accepted money through him from his brother for work I performed before.

Q. You had done work for him before?

A. Yes, sir.

Q. How did you get paid off?

A. Why, Will Ellis paid me while his brother was away.

Q. In checks?

A. It seems to me he gave me a check, I am not quite sure on that point—I am pretty sure it was.

Q. Do you remember how he signed it?

A. No, I can't recall.

Q. On what properties did you work for him?

A. I worked on the Imperial ground.

Q. Did H. E. Ellis ever state to you that he had made his brother his agent?

A. Yes, he asked me at one time to show him some property, show his brother, his brother was going to take charge, he said, while he was gone; he was going below; he was going to act as his agent.

(Testimony of John Hughes.)

Q. In what capacity were you asked to go down there and remain there, as you have testified?

[260—218]

A. Well, he asked me to go down and take charge and keep track of all the property there and not allow any of it to be removed and he wishes me to prospect the ground and showed me several places he wanted me to prospect.

Q. Did anybody come down there and try to remove some tools from there?

A. Not for some time; Mr. Millard got some little dynamo that was personal property, that was in Mrs. McDougall's house. Several people tried to get stuff, tried to get me to loan stuff.

Q. What date was it that Mr. Millard came down there?

A. That was somewhere along about the, I think it was the 12th of August, some time prior to the 15th of August, anyway, because he told me they hadn't intended giving up possession until the 15th. I protested against their moving stuff, and he said the Cliff Mining Company didn't intend to give up possession until the 15th. I had reason to know this dynamo belonged to him personally and was in Mrs. McDougall's house.

Q. You were there on the 15th of August, were you?     A. Yes, sir.

Q. State what occurred on the 15th of August.

A. Well, I don't remember much; Will Ellis came down there; at that time I had a journal; I kept

(Testimony of John Hughes.)

track of most things in, and I put in the journal that Will Ellis called that day—a diary I kept.

Q. A diary you kept from day to day?

A. Yes, sir.

Q. Have you got it here?

A. Yes, I have it in my pocket.

Q. You may look into that and refresh your memory.

A. That is all I put in the 15th of August—I just put, W. Ellis called, and that is all; there was nothing of importance transpired, [261—219] I guess, on that day.

Q. That is the 15th?      A. Yes, sir.

Q. Did you at that time have the keys to this property?

A. I had the keys to the property all the time, from the day he gave them to me.

Q. You had?      A. Yes, sir.

Q. When did you first see Mr. Treat after you first got on to that property?

A. Treat and Archibald came there on the 18th of August.

Q. State what occurred at that time.

A. Why, they were putting up some notices on the mill there, warning people against trespassing, he and Archibald were putting them up there, and I think I suggested to them at the time that they ought to see Will Ellis, the agent, before doing this, and Treat left some notices for him to sign; he said he was just doing this out of friendship for Ellis,



(Testimony of John Hughes.)

wanted to protect his property and warn people from trespassing, and warned me that if I let anything go, I was subject to the penitentiary or something of that kind, and kinder scared me a little.

Q. Was that all that was said?

A. I don't remember; we had quite a conversation, Treat and Archibald and myself; Archibald said he had bought an interest from Smith, a part of the interest from Smith; that Smith claimed an interest in the property—it was the first I had heard of any interest in the ground and I told him so. He said, well, he wouldn't lose much, Smith told him if he didn't make good on the tenth, that he would give him his money back, and he said he didn't care much about it—at that time the property didn't look [262—220] good, anyhow.

Q. Did Mr. Treat say anything about paying you at that time?

A. I don't think he did, at that time, but later on, he did.

Q. What did he say?

A. It was some time, quite a little while after that—I can tell the date from my book (witness refers to book)—on the 20th of August, no, on the 19th of August, Mr. Treat sent an order down to me to send up some steel by Mr. Callahan for a friend of his, as an accommodation, and I refused to send it at the time, on account of orders I had gotten from Mr. Ellis and also this notice, although I didn't know the standing of the thing. The next time he

(Testimony of John Hughes.)

came down he said I should have sent this stuff up and wanted me to understand that he had something to say in the matter himself. I had written a letter in the meantime explaining why I didn't send this, that I expected to draw my wages from Mr. Ellis and as long as I was doing so, I would try to look out for his interests and keep his stuff together, and he came down and told me that stand was all right, but he wanted me to understand that he also was paying my wages, or intended to, something of that kind, but I couldn't see I had any right to let any of the property *to*, and didn't let any go.

Q. Did he make any direct demand upon you for any of that property?

A. It was just a written order, a letter, to send steel up by Callahan, which I refused to send.

Q. Did he come up and demand it himself later on? State whether he came and demanded any of that property.

A. He came down the next day himself and stated he would like to get that stuff, that steel, sent up but I didn't send it—I [263—221] think I told him I didn't have it, or something of the kind.

Q. You heard Mr. Treat's testimony about getting some keys, did you not? A. Yes, sir.

Q. State, if you know, just about what that incident was, about the keys.

A. Well, this key business—Mrs. McDougall stayed there after her husband went to the Gold King, and she had some keys, in fact almost any key

(Testimony of John Hughes.)

would fit the little door or fit the doors—there was quite a bunch of keys, and several doors were without locks, and she got an order from Colonel Millard, something about these keys—anyway, Treat handed the keys to me; I saw him pick them up there.

Q. Did you see this order?

A. I did, yes—I saw the letter.

Q. What was said in that letter?

Mr. RITCHIE.—Have you the letter?

A. The letter was not to me, it was just an order, and the lady showed it to me afterwards.

Q. State what was in the letter.

A. The letter stated to not give up the keys to Mr. Treat and also said, lay them somewhere where he could pick them up, and I saw Treat pick them up there.

Q. Did you ever, at any time, receive any money from Mr. Treat for staying down there?

A. Not for any purpose; no, sir, never.

Q. Who did pay you?

A. I received payment from Mr. Ellis for the work I done down there always.

Q. You never asked Mr. Treat for any money?

A. I certainly did—I asked Mr. Treat for wages when I came up [264—222] from there, as he promised to pay me wages.

Q. What did he say then?

A. Well, I can't remember the exact words.

By the COURT.—You did ask Mr. Treat?

A. I certainly asked Mr. Treat for wages, be-

(Testimony of John Hughes.)

cause he promised, and said he was responsible for my wages; when I left there about Thanksgiving, Will Ellis referred me to Mr. Ganty and there was some little talk about royalty, but I needed the money very badly at the time, and I thought of what Mr. Treat had said and asked him if he could pay me as he promised, and I don't know, he made some suggestion, that I should go back there and get underground and represent, but I told him it was difficult for a man to work on any ground unless he felt sure he was going to get paid for it, and he said he would see Archibald about it and we went to the Panama and they left me in a little room for half an hour and then came back and bought me a cigar and then said I should write to Mr. Ellis in Denver, and if Mr. Ellis would recognize me in writing as having a right to pay me these wages, he would be glad to do so, and I told them I couldn't *but* anything at Blum's on that basis, and I put a lien on the property to protect me and protect others.

Q. Have you been paid since then?

A. I have made very satisfactory arrangements since then, yes, sir, but not by Mr. Treat at any time.

Mr. GANTY.—That will be all.

Cross-examination by Mr. RITCHIE.

Q. When did you file this lien?

A. The lien was filed before the thirty days were up, after I left there. [265—223]

Q. When did you quit there?

A. Just prior to Thanksgiving, some time.

(Testimony of John Hughes.)

Q. Thanksgiving, 1914?

A. Yes, sir; Thanksgiving, 1914.

Q. And you filed the lien within thirty days thereafter?     A. Yes, sir.

Q. And when were you paid?

A. I don't know—I wrote down to Mr. Ellis at Denver and got the lien satisfied to my satisfaction; that was probably—

Q. You said something about Will Ellis giving you a check?

A. He asked about Will Ellis acting as agent, yes—he gave me a check as his brother's agent; that was for work on Mineral Creek I did for him.

Q. That was for other work?     A. Yes, sir.

Q. Mr. Ellis didn't pay you the money—he gave you a lease on part of the Cliff ground. Is that the way the lien was satisfied?

A. We had a kind of business arrangement that was the same as handing the money to me; he couldn't give me the money because he was in Denver and I was here, but it was the same as money to me, exactly.

Q. Then he didn't send you any money?

A. I didn't see Mr. Ellis for months afterwards.

Q. Did he send you any money, or did anybody for him pay you any money?

A. He sent me an order that was the same as money.

Q. What was it?

A. It was an order that I could take the money out of the ground.



(Testimony of John Hughes.)

Q. And in consideration of that you satisfied the lien?

A. Pretty much that way, yes—No, I guess not, I take that back. No, I received a settlement for that afterwards—I didn't consider [266—224] this as a settlement, but I took the money out of the ground and settled it.

Q. That is what we are getting at—we want to know precisely how you were paid. A. Yes, sir.

Q. He gave you a lease on part of the ground and in consideration of that you satisfied the lien?

A. Yes, sir.

Q. And took your money out of the ground?

A. Yes, sir.

Q. (By Mr. GANTY) When you settled up with Mr. Ellis upon this lease that he gave you, did you or did you not deduct from what you gave him the amount that was owing to you for your services?

A. I did.

Witness excused. [267—225]

**[Testimony of D. F. Millard, for Defendant.]**

D. F. MILLARD, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. GANTY.

(Testimony of D. F. Millard is reduced to a recital, as follows:)

I have been employed in the office of Mr. Lathrop, in Valdez, as bookkeeper, etc., in the steamship company's office and kept the books of the Cliff Mining Company, part of the time. That was about from

(Testimony of D. F. Millard.)

the 28th of May until the 1st of October, 1914. In the course of such employment I made out some statements of royalties and accounts between Mr. Ellis and the Cliff Mining Company. It seems to me that Mr. Lathrop went to your office (Mr. Chas. Ganty's) one day with some statements made up by me and there was some discussion as to the contents of the statement; I think it was regarding royalties—I figured the percentage wrong. [268—[226—228]

**[Testimony of Charles G. Ganty, for Defendant.]**

CHARLES G. GANTY, being first duly sworn, made the following statement:

I wish to state to the Court that I have acted as attorney for Mr. H. E. Ellis and as attorney for Mr. Will Ellis, his brother, and that Mr. H. E. Ellis requested me to act as such attorney for his brother during his absence from Valdez, his brother being in charge of the Cliff mine property and other mining properties of Mr. H. E. Ellis; in fact he informed me that he had turned over all his interests to him to look after in Valdez except the Orpheum Theatre. The statements made by the Cliff Mining Company were brought into my office by Mr. Will Ellis and the first time I noticed a charge for what was called the Archibald portion of patent expense, it was on a statement handed to me by Mr. Lathrop, I think on July 20, 1914, it was handed to me, because I had protested against an office statement which contained a misstatement of the royalties due them, put the royalties due Mr. Ellis at 80% and there had been some

(Testimony of Charles G. Ganty.)

discussion and Mr. Lathrop, I remember, brought in some new statements, that were made out correctly, but it was on or about that time, the 20th of July, that I first saw this charge of patent expense and this other charge of the cost of the Gold Bluff, 80% of the Gold Bluff suit, in fact this is the statement in which the attorney's fee paid to Mr. Bunnell was first stated as a charge against Mr. Ellis.

By the COURT.—Is that the one that Mr. Kraemer said was delivered about April?

A. That is the one—it could not have been made up as long as that.

By the COURT.—Who gave it to you?

A. I believe that Mr. Lathrop brought this one in, because I had a previous discussion; he brought in a bunch of statements at that [269—229] time corrected as he said and we were trying to settle these questions; a good portion of those were burned in the fire but I have here all I retained and the date is definitely fixed in my mind because Will Ellis came in the day after that and I advised him to immediately protest on behalf of his brother to the Cliff Mining Company against their making any such charge or against their allowing Treat, Smith and Archibald to be recognized as owners, through the agency of the Cliff Mining Company, as owners of the property and I wrote a letter and submitted it to Mr. Will Ellis, which Mr. Will Ellis took into the Steamship office and delivered to Mr. Lathrop. I went with him at the time and was outside when Will Ellis went in with this letter and then we went on together down

(Testimony of Charles G. Ganty.)

town. The records of the Cliff Mining Company have been destroyed by fire; I intended to prove this through those records, and all I have now to do is to simply introduce this copy, if I can introduce it. The copy was left in my office and in my care. The original was delivered by Mr. Will Ellis to Mr. Lathrop in the Steamship office and Will Ellis also signed the copy and I retained it.

By the COURT.—Do you know that Mr. Lathrop received it?

A. I handed it to Mr. Will Ellis; after he signed the original he took it into Mr. Lathrop's office. I was going home at the time I saw him go into the Steamship office and saw him deliver the original. I now have the copy and would like to introduce it in evidence.

By the COURT.—Is there any objection to it?

Mr. DONOHOE.—I want to examine it first.

The WITNESS.—And I wish to state to the Court that Mr. H. E. Ellis to my knowledge cannot possibly have had any statement [270—230] from the Cliff Mining Company regarding this Gold Bluff expense until after he came back to Valdez, because the statements were issued to Mr. Will Ellis and were by him, most of them, brought into my office and I have them here at this present time.

By the COURT.—Didn't you consider it a matter in which Mr. H. E. Ellis was interested?

A. Exactly, but we expected Mr. Ellis back at any time—he had been sick and we expected him back at any time. I wrote him one letter urging him to come

(Testimony of Charles G. Ganty.)

back as soon as possible but this was a long time before he finally came back; we expected him back from day to day right along and I was carrying on this thing in the meantime; always waiting for him to come back; I had taken the matter up with the Steamship Company, with Mr. Lathrop, and we had agreed to wait until Mr. Ellis came back before finally settling this thing. I requested permission to see the books of the Cliff Mining Company, we *we* could settle other matters in dispute but that was refused until just lately and that was the reason the thing was held over awaiting Mr. Ellis' return, and I am satisfied that Mr. H. E. Ellis did not know of this claim outside of what he might have known before he left here.

By the COURT.—You never wrote him about it, then?

A. I wrote one letter, stating these matters had come up and urging him to return. The letter was directed to the Ideal Building, Denver, and was returned here for some reason or other—it was returned undelivered; it was written care of a bank in Denver and was returned here unclaimed—I forget the name of the Bank at this time. I had the returned letter which I kept, but that was burned in the fire, but I wrote that to him at his bank address, I remember, and later on I [271—231] got his Ideal Building address, which I think was his proper address. I had forwarded money to Mr. Ellis through the bank, the bank in whose care I wrote to him. That was the only address I had at the time; he had been



(Testimony of Charles G. Ganty.)

roving all over the country and it was difficult to keep track of his address. I did not expect to testify in this matter, I expected to bring this out by the company's own records, but am stating the facts as I know them to be.

Mr. RITCHIE.—We have no objection to this letter going in. The letter offered by Mr. Ganty is marked Defendant's Exhibit #11 and admitted without objection. It reads as follows:

**Defendant's Exhibit No. 11 [Letter, July 22, 1914,  
H. E. Ellis to Cliff Mining Co.]**

July 22d. 1914.

Cliff Mining Company,  
Valdez, Alaska.

Gentlemen:

Your attention is called to your statement in account with H. E. Ellis, dated July 20, 1914, wherein certain credits are given Mr. Ellis by reason of payments made by Treat, Smith and Archibald, on April 30, 1914, as proportion of patent expense.

On behalf of Mr. H. E. Ellis, I hereby protest against your receiving any money from said parties on such account or any other account or performing any act on behalf of said Ellis that would in any way recognize or tend to recognize any interest or right of said Treat, Smith or Archibald in and to the property now or heretofore leased by the Cliff Mining Company and known as the Cliff Mine. And I hereby notify you that said H. E. Ellis claims the sole and exclusive right of possession and ownership of said Cliff Mine and all of said premises held by you

(Testimony of Charles G. Ganty.)

from the date of the termination and cancellation of the lease under which you held said premises.

Yours respectfully,

H. E. ELLIS,  
By W. M. ELLIS,  
Agent.

The WITNESS.—I merely wish to set the situation right before the Court to the best of my ability. I know of these things and believe the Court should be informed of them in view of the situation.

By the COURT.—I asked Mr. Ellis about his knowledge of the claim [272—232] in order to give you an opportunity to show why it was he did not get notice *of until* after a year's time?

A. That was exactly the reason—we were simply waiting for him all the time to come back but his sickness dragged on longer than he expected—for one reason or another anyhow he did not come but it was always understood between Mr. Lathrop and myself that we should wait.

Cross-examination by Mr. RITCHIE.

Q. You knew Mr. Ellis' address in Denver all the time?

A. Not all the time—it was after this letter was returned some time, a long time, in Denver, was the bank through which I sent him some money.

Q. You don't know yet how much time he spent in Denver and how much elsewhere?

A. Not to my knowledge. I asked Mr. Will Ellis about it and his brother didn't seem to be exactly informed at all times.

(Testimony of Charles G. Ganty.)

Q. Why did you get that notice from the Cliff Mining Company?

A. It was simply through these statements which were brought to me—it appeared to me there was an opportunity being made to establish an interest in this mining claim and my understanding, from my conversations and my knowledge of the thing generally—I have known the parties for a long time and some of the transactions were so different—I knew that Mr. Ellis claimed an entirely different ownership, he claimed the entire ownership of this property, had done so for years.

Q. Then at the time you wrote this letter, you knew that Mr. Treat and Mr. Smith and Mr. Archibald were claiming an interest?

A. No, I did not, but it aroused my suspicions, in view of this [273—233] proposition; I knew—there had been some talk about it; I had spoken to Mr. Bunnell about it as a matter of fact and I had heard about this lease, I believe, or deed from Smith to Archibald.

Q. Did you ever talk to Mr. Bunnell as much as two years ago about this lease and the possible construction that might be put upon it?

A. I have talked to him—I don't think it was that long ago—it was less than that.

Q. You discussed with him the possibility of a different construction than that contained in it being put upon it?     A. Yes, sir.

Q. That although it recites that Mr. Ellis owns four-fifths of that was not binding upon him?

(Testimony of Charles G. Ganty.)

A. 3. I don't remember that particularly, but I remember we discussed the situation right along—Mr. Bunnell was there at the time it was signed; he was a witness.

Q. You have known as attorney for Mr. Ellis and having pretty close knowledge of his affairs, you have known for two years or more that this claim was going to be asserted?

A. No, I can't say that I have, except something like that by reason of the fact that this deed was made—I had been informed about that from a reliable source, about this deed to Archibald, Smith to Archibald, and I didn't doubt at the time but what it *probably lead* to some suit, if Archibald tried to assert his title, if he had any.

Q. After you wrote this letter to the Cliff Mining Company, did you serve any notice on Treat or Archibald?     A. No.

Q. Or write to Mr. Smith? [274—234]

A. No, I said nothing at all about it.

Q. Did you write to Mr. Ellis about it?

A. No, I don't think I mentioned that particular point, I believe I told Mr. Will Ellis to be sure to write to his brother and tell him about these details. I haven't had much to say to Mr. H. E. Ellis since he left—I generally corresponded through his brother.

Q. Did you ever tender the money to Mr. Archibald and Mr. Treat, who were in the city here?

A. What money?

Q. The money that you disclaimed the right to in that letter?

A. I never tendered them any money.

Witness excused.

Defendant rests.

Whereupon court adjourned until to-morrow (Thursday) morning at ten o'clock.

Thursday, October 7, 1915.

MORNING SESSION.

**Rebuttal.**

**[Testimony of Edmund Smith, for Plaintiffs (in Rebuttal).]**

EDMUND SMITH, recalled as a witness for the plaintiffs, in rebuttal, testified as follows:

Examination by Mr. DONOHOE.

Q. You were present yesterday when Mr. Ellis testified?     A. I was.

Q. *Nad* heard his testimony regarding the articles of incorporation that had been prepared for the purpose of incorporating the Mystic Gold Mining Company?     A. I did.

Q. You heard him state how those articles came into his possession?     A. Yes, sir. [275—235]

Q. Just state to the Court your remembrance of what you did in connection with those Articles of Incorporation and how they were signed?

A. My recollection is just as I testified when I was on the stand, that they were left in the office and I felt just as certain then as I do now that that was the disposition of them and the condition of them looked as if they had been in that back-room.

Q. What did you do with papers that are commonly called dead papers?



(Testimony of Edmund Smith.)

A. Well, if we knew they were absolutely worthless and nothing ever would come up again regarding them, no strict account was taken of them, but most all legal papers in the office were packed away in boxes that we would pick up and secure from the different stores in the town; there were several boxes of these papers, and usually after a term of court or at intervals or when we got to it, matters that were apparently dead would be just gathered up and packed in these boxes and put in the back room or the shed of the building we occupied.

Q. Was that shed protected from the weather to any great extent?

A. No, it was open, the door was nearly always open, we never closed the door day or night—the door facing the bay; the door was open and cracks in it and it leaked in several places.

Q. Did you notice the condition of the covers of the articles of incorporation introduced in evidence?

A. I did.

Q. Comparing that with other papers that have been introduced in this trial as of about the same date, what comparison have you to make?

A. Well, the articles of incorporation are about in the condition I would expect them to be if they had remained in one of those boxes in the office for any length of time, because we frequently [276—236] had to resort to those boxes and dig out different papers and they were exposed to the weather more or less and the dust.

Q. Have you any recollection whatever of giving

(Testimony of Edmund Smith.)

those articles to Mr. Ellis?

A. None whatever; it doesn't seem possible to me that I could have delivered them under the conditions and in the manner designated.

Q. Now I hand you Defendant's Exhibit #9 which purports to be a letter written on the 5th day of June, 1909, addressed to Mr. H. E. Ellis and signed George C. Treat and Edmund Smith and ask you to state the circumstances of the execution of that letter and the intention of the parties who signed it and Mr. Ellis at that time?

A. Well, as to the letter, I had forgotten about the letter and I have no distinct recollection of preparing the letter, but at that time there were two propositions just as Mr. Ellis testified and as Treat and I testified. Mr. Ellis wanted to eliminate us from the property—

Mr. GANTY.—I think this is repetition.

By the COURT.—The letter was brought out by you—He may proceed.

The WITNESS.—(Continuing.) There were two propositions in writing, one was the lease to the property and what royalty we would expect and the other was the amount of money that we would take for our interest in the property and since Mr. Ellis testified about Mr. Crane's suggesting that he could buy us out, why that recalls the fact that there was discussions regarding the purchase of our interests in the property, so I hurriedly prepared this letter on the two propositions—the first paragraph refers to the lease, what royalty we would expect and the

(Testimony of Edmund Smith.)

[277—237] second paragraph is what we would expect for our interest in the property in case of a sale.

Q. As I understand you, your idea at the time that letter was delivered was, that if the ground was leased you would accept 15% royalty notwithstanding you owned 20%.

A. Yes, that was a matter of compromise as I stated the other day.

Q. But in case they wanted to buy your interest, it would then take \$12,500?

A. \$12,500 was the price we fixed on our interest in the property.

Q. And that clause in the letter referring to royalty was not intended to eliminate your interests in the property?

A. Certainly not—I think that is covered by the second paragraph of the letter, referring to a different theory altogether—the theory of leasing and that was carried out in the lease.

Q. You heard Mr. Ellis' testimony yesterday in regard to the fact that some time previous to the 5th day of June, 1909, you and Mr. Treat had agreed that you would abandon the corporation proposition and fall back on your original contract, which was termed the mortgage contract of the 15th of May, 1907—you heard that testimony?

A. I heard that testimony, yes, sir.

Q. State your understanding of that transaction—if there ever was any?

A. There never was any such transaction. The

(Testimony of Edmund Smith.)

proposition of the contract of, I think it was July 9, 1908, was in full force and effect, as understood by all of us, up to the time of the substitution of the lease to Mr. Millard and it was discussed at that time that a 20% interest, 20% of the stock of the corporation, was equivalent to owning 20% of the assets or property of the corporation—that is what we based our 20% [278—238] claim on, that we were willing to make this change and accept 20% interest in the property in lieu of what was practically 25% of the interest in the stock.

Q. Now was that contract of May 15, 1907, which is termed the mortgage contract, ever recorded?

A. It never was, at least I never had it recorded and I can find no record of it.

Q. You have examined the records to see?

A. I have examined the records to see.

Q. Recently?

A. Recently, since the commencement of this trial.

Q. You heard Mr. Ellis' testimony yesterday regarding conversations he had with you concerning a proposition that Mr. Lathrop would come in with yourself, Mr. Ellis and Mr. Treat at the expiration of the Millard lease to operate this property?

A. I heard that testimony, yes, sir.

Q. Just state your remembrance of that conversation and how it happened to come about?

A. I think that was the spring I moved to Seattle, shortly before I left—I am not certain as to the date, however, but while I was in Seattle, just prior to that time I met Mr. Lathrop and we were discussing the

(Testimony of Edmund Smith.)

Cliff matters and Mr. Lathrop suggested that he would like to come in with the owners of the property at the expiration of the lease, providing of course that our relations were pleasant and the property was satisfactory at the time. I took the matter up with Mr. Treat and Mr. Ellis in my office in the city and stated to them what Mr. Lathrop had said and Mr. Ellis said that would be very satisfactory to him, that he had always found Mr. Lathrop a good [279—239] business man and if he had any differences with him, he could always sit down and talk it over and adjust it in an amicable way and the question came up as to the details—we went more into details, and I said to Mr. Ellis that as Mr. Treat and I only owned ten per cent each in the property, if Mr. Lathrop bought any considerable amount, he would have to buy either all of ours or buy principally from Ellis, and Mr. Ellis said, if everything was all right at the expiration of the time, why we would have no difficulty on that ground. This last summer I wrote to Mr. Ellis, after taking the matter up with Mr. Lathrop for the carrying out of that proposition.

Q. And did you get a reply from Mr. Ellis?

A. I never received a reply from him.

Q. In that conversation you spoke about, with Mr. Ellis, did you make any statements that you would buy an interest from Mr. Ellis, so you could come into the deal, in addition to your original interest?

A. We discussed the original interest at that time and I told him if I was financially able to do so that I would like to divide it up into quarters, that we



(Testimony of Edmund Smith.)

would purchase a full portion if we were able to do so and have a close corporation—the object was that just the four of us were to be interested.

Q. That is, in addition to your ten per cent interest you were to buy enough to make yours a quarter?

A. Make it a quarter all around, a quarter each.

Mr. DONOHOE.—That is all.

Witness Excused. [280—240]

**Surrebuttal.**

[**Testimony of H. E. Ellis, for Defendant (in Surrebuttal).**]

H. E. ELLIS, recalled, as a witness in surrebuttal, on behalf of defendant, testified as follows:

Examination by Mr. GANTY.

Q. You just heard the testimony of Mr. Smith relative to these articles of incorporation and other papers, state to the Court what you did with those papers after they came into your possession as testified by you the other day?

A. The papers were deposited in the safe in Mr. Ganty's office where they remained until after the fire, when the safe was opened—after the fire recently.

Q. You heard the conversation stated regarding these alleged negotiations with Mr. Lathrop—did any such negotiations occur?

A. Yes, in a way they did.

Q. State your version of what they were, to the Court.

A. The way Mr. Lathrop had often spoken, he

(Testimony of H. E. Ellis.)

would like to be interested in the property itself and if there was any chance, why he would like to get into it after the lease, if there wasn't an extension of the lease to the Cliff Mining Company. He spoke to Mr. Smith about it and Mr. Smith took it up with me one day—I was coming by the office and a clerk he had in the front room called me into the office, as I was coming up the wharf—I was working down the Bay—and he spoke of the matter and as he said, I told him at the time that as far as I knew then, it would be very agreeable to me to have Mr. Lathrop interested in the property in some manner; he put it up this way, that the chances are I wouldn't be in town, probably would want to put in a good deal of time in the States and it would be very convenient for me to have somebody on the ground to look after the property. There never was anything done [281—241] further in that line, though; and in speaking of the interest that Mr. Treat and Mr. Smith were to have, it was understood by me that they were to buy an interest at the same time that Mr. Lathrop did and that it was never understood that I was to own less than 50% interest in the property, never spoken of in any way that I was to own less than 50% interest—that the three of them would probably own the smaller interest—I was to hold control of it.

Q. Was anything said about any interest that they might have at that time continuing?

A. Nothing was said in that line.

(Testimony of H. E. Ellis.)

Cross-examination by Mr. RITCHIE.

Q. When these articles of incorporation were given back to you, as you stated, after signing the Crane contract or the Millard contract, I don't remember which, you gave them to Mr. Ganty, you say, and he put them in his safe?

A. I put them with other papers into Mr. Ganty's safe.

Q. Other papers referring to the same thing?

A. Well, to the Cliff property, and I had a number of other papers and put them in the safe together.

Q. You had a lot of papers referring to the Cliff, several other papers, copy of lease with Mr. Crane and lease with Millard and these articles of incorporation and you put all these together and put them in Mr. Ganty's safe?

A. Yes, they were in the safe.

Q. Where was Mr. Ganty's safe at that time?  
Mr. Ganty's office?      A. It was on the wharf.

Q. The same office he had up to the time of the fire?  
A. Yes, sir. [282—242]

Q. When Mr. Smith gave you these Articles of Incorporation were they in the same condition they are now—did they look like that? (Showing witness paper.)

A. No, sir, they were not smoked up.

Q. When were these taken out of Mr. Ganty's safe?

A. A day or two following the fire—I don't know just when.

Q. A day or two following the fire?

(Testimony of H. E. Ellis.)

A. A day or two following the fire.

By the COURT.—Were these in the safe at the time of the fire?

Mr. GANTY.—Yes, sir, they were in the fire—you can smell the smoke on them now.

Q. Was this letter also in the safe with the others? (Handing letter.) A. Yes, sir.

Q. Do you smell any smoke on that?

A. I beg your pardon, I made a mistake—this letter was with some private papers I had in the States with me at the time, among some stock that I had taken with me to the States, with some other papers I had in my grip at the time.

(By Mr. GANTY.)

Q. About how long before the fire was it that you gave me these papers? It wasn't right at the time you got them from Mr. Smith, was it?

A. That I gave them to you?

Q. Yes.

A. I didn't turn them over to you until later but they were in the safe all of this time, for a number of years.

Witness excused.

Testimony closed. [283—243]

Friday, October 8, 1915.

#### MORNING SESSION.

By the COURT.—In this case of Treat and others versus Ellis, I want to ask the parties if they have any objection to opening up the case again for the purpose of asking Mr. Ellis another question and it may be necessary to get the testimony of another

(Testimony of H. E. Ellis.)

witness. I will state the matter plainly to counsel. It is a matter which may aid me in my consideration of the case, in arriving at a better understanding of it and getting at the truth. As I recall it now Mr. Charles G. Debney told me a year or two ago, maybe longer, that some time in the early days of the Cliff mine, Mr. H. E. Ellis offered to sell him an interest or option or lease an interest and he told me the price and terms. Now, I would like to open up the case for the purpose of asking Mr. Ellis if he made such an offer and if there is any difference between his statement of the matter and the fact as told me by Mr. Debney, I would like to have Mr. Debney's testimony, either his deposition or I would be willing to take his word, by wire,—just wire him the question and get his reply and it is a matter I would like to have you agree upon. I feel in matters of this kind or any kind, where there is a doubt that can possibly be cleared up or the truth of the matter arrived at, it is proper to open up a case for such purpose.

Mr. DONOHOE.—We have no objection.

Mr. GANTY.—I have no objection at all.

By the COURT.—An order will be made opening up the case for that purpose only. You may have Mr. Ellis here as soon as it is possible to get him here. I think it might be well if you can agree upon it now before Mr. Ellis is asked this question, if you can agree that Mr. Debney's answer to a telegram may be [284—244] considered as evidence in the case—I suggest this as a means of saving time and



(Testimony of H. E. Ellis.)

expense. I would as soon take his answer to a message as the sworn statement, if you agree to that method of taking it.

Mr. GANTY.—I have no objection to any method that will arrive at the truth of this case.

Mr. DONOHOE.—We have no objection to sending such a telegram at this time and it may be considered as evidence if the Court desires, his answer to the wire.

By the COURT.—I don't know that it will be necessary to send the telegram at all until Mr. Ellis has testified—it may be that his testimony will practically conform to the matters as told me by Mr. Debney. As soon as you get Mr. Ellis here you may call the matter up.

Saturday, October 9, 1915.

#### MORNING SESSION.

By the COURT.—In this case of Treat et al. vs. Ellis, are you willing to recall Mr. Ellis?

Mr. GANTY.—We are willing to recall Mr. Ellis and if among other things the Court desires information as to what value Mr. Ellis placed upon this property, Mr. Martin was offered an interest in the property in 1907 and we should like to have him examined as to what Mr. Ellis asked him for this interest at that time and for that purpose we ask that the case be reopened for the admission of the testimony of Mr. Martin and Mr. Ellis on that point.

Mr. DONOHOE.—We object to any offer made to Mr. Martin in 1907. If Mr. Martin made the

(Testimony of H. E. Ellis.)

defendant Ellis an offer it would be a different situation, but something Mr. Ellis may have told Mr. Martin, as to what he would take, in 1907, has no bearing on the [285—245] case. This offer made Mr. Debney as I understand it was made about some-time, between the 9th of *of* July, 1908, and the 5th day of June, 1909.

By the COURT.—I don't know what date it was. You can take the stand, Mr. Ellis.

[**Testimony of H. E. Ellis (Recalled by the Court)**].

H. E. ELLIS, recalled—Quotations by the Court.

Q. Mr. Ellis, did you, prior to making the option to Mr. Crane, in June, 1909, offer to sell, option or lease to Mr. Charles G. Debney any interest in the mining claim or claims now known as the Cliff?

A. Yes, sir.

Q. State then about the time this was and what was the offer as to the interest in the mining claims, the price and terms—state about the time as near as you can.

A. The claims were located in August of 1906. I was stopping around the St. Elias Hotel a great deal of the time, Mr. Debney and Mr. Poot were always friends of mine, and a short time after the location of the ground, I had an assay or two on the ground and panned up a lot of the ore—I think I borrowed Mr. Debney's mortar, he had one there at the St. Elias Hotel and I took some of the rock up there and panned it, ground it up and panned it—I didn't have one at home or he had a larger

(Testimony of H. E. Ellis.)

one than I had, and he saw the values I was getting and wanted to know where it came from and all about it, and I told him about finding the ground, that I had just put a shot in it, something of that kind, did very little work on it, and it panned so nicely that he got interested and wanted to know if there was a chance for him to get in on it, and so I believe it was in September, probably, or the month after I discovered the ground, it may have been in August—I am not certain as [286—246] to the exact date, but it was very shortly after I discovered the ground. Mr. Debney went down with me and looked at it and got some samples of it and he took some samples of the quartz and got a very good assay out of it. He only made one assay at that time and got a very good assay, I don't remember but I think it was \$63.20, but I am not positive that that was the assay; and we planned what we would do and what interest I would let him have; he wanted to know what my idea was and I told him that from the little of the ground that I had exposed, the little of the vein that I had exposed, I considered it a very fine prospect and I thought sure it would make a little mine, nothing very big probably, but a nice little property and if I could get a small mill on it, a cheap mill, I considered that the property would develop itself, from what we could take out of it, and so I made him the proposition that if he would give me a thousand dollars in cash and agree to put up a like amount—that I

(Testimony of H. E. Ellis.)

would put this money back into the ground and he was to put up a like amount for the developing of the ground and we would go down there, either he would work with me and we would work on the ground all winter or he should furnish a man to work with me—he was thinking then of going out to the states and he didn't know whether he could go down himself or whether he would have to furnish a man. He said I could pick some good man I knew to go down and work with me all winter and he would pay for it and he would put up this thousand dollars and then in the spring if the ground warranted it, we would expend the rest of this money for a small stamp mill, which we thought we could put up ourselves and run, and then after that, why the thing was to be divided, the expense was to be divided according to our interest in it—[287—247] he was to own one-quarter and I three-quarters.

Q. Do you say he was to give you a thousand dollars?     A. A thousand dollars in cash.

Q. And what do you say about a like amount?

A. He was to expend a like amount against my thousand—we were to put the entire two thousand dollars into the ground.

Q. He was to put up two thousand dollars, then?

A. He was to give me a thousand dollars in cash and I was to deposit my thousand and he was to deposit the same amount in the bank to be expended in development.

Q. And what interest was he to have then—you

(Testimony of H. E. Ellis.)

say a quarter?      A. A one-quarter interest.

Q. It wasn't a half interest?

A. No, sir, a one-quarter interest.

Q. Did Mr. Debney get a number of assays made after that?

A. No, not to my knowledge, he did not. A little later he went down again—we went down in the forenoon and had lunch down at my camp there and looked over the ground—we planned where we would get our little stamp-mill, where we would put up a little shack to live in that winter, if we stopped there and got to work and he took an assay—I think we either put in the second or third shot that had been put into the ground while he was there and drew out some fresh rock and broke into the wall rock quite a little bit and in the wall rock was quite a lot of fine iron, in the hanging wall, it was all impregnated with iron and he thought that ought to carry values for three or four feet in width and I think he took an assay, including the six or eight inches of quartz, which was the size of the vein there, and also this impregnated slate on the left side.

Q. Do you know of his having taken about that time a considerable [288—248] number of assays, say five or six or seven or eight or nine or ten, something like that?

A. No, I do not—he brought up some more rock, but that was the only assay he took of the ground that I know of—I think that was his second one, which ran very low.



(Testimony of H. E. Ellis.)

Q. He didn't agree to accept your offer, then?

A. No, while he and Mrs. Debney were discussing the thing, after their first assay, which ran very good, I think, \$60, they were so much disappointed in this next one that they were rather afraid to put up their money. Mr. Debney had just sold out his interest in the St. Elias and he told me he had four thousand dollars that he would like to invest in some property that he thought would make good, but he didn't want to put into anything where he would stand too much of a chance of losing, but was willing to put up half in a proposition of that kind. The ground was not opened up at that time and in fact the best showing had not been discovered then and was not until after Mr. Debney had gone out that fall—latter in the fall, I found the richer showings further up; it was exposed a possible distance of probably from forty to sixty feet down in the lower part of the little gulch along-side the mill there, about where the roof of the lower tunnel would be, forty or sixty feet further up, down lower. It was covered with broken stuff, very deep, that had slid down to the gulch and was all covered with willow brush, hadn't been cut out. We climbed out among the alders and got up to the showing—you couldn't see it from the beach at that time, and we just dug into it, it was almost all pick work. We had a little set of drills, five or six of them, probably, three-quarter steel I carried around with me and I put in one shot—[289—249] and then would

(Testimony of H. E. Ellis.)

have to bring my tools back to Valdez and get them sharpened up—about all they could stand was one drill, that small steel.

(By Mr. GANTY.)

Q. Mr. Debney left in the fall after looking at the property?

A. Yes, Mr. Debney went out to the states a short time after this—I couldn't say how long.

Q. Did you later on receive a communication from Mr. Debney?     A. Yes, sir.

Mr. GANTY.—I desire to introduce this letter in evidence, as it tends to fix the date of the negotiations between Mr. Ellis and Mr. Debney.

Mr. DONOHOE.—We object to the introduction of the letter on the ground that it is wholly incompetent being between Mr. Ellis and an outside party

By the COURT.—There is nothing in the letter that affects the case and it does tend to fix the negotiations between Ellis and Debney—it is admitted.

Plaintiffs allowed an exception to the ruling.

The letter is marked Defendant's Exhibit #12, admitted in evidence and reads as follows:

**Defendant's Exhibit No. 12 [Letter, February 11, 1907, C. G. Debney to "Friend Red"].**

San Diego, Feb. 11th, 1907.

Friend Red:

Thought I would let you know we are leaving Seattle on the "Saratoga" March 4, '07, so if you wanted anything you could let us know by letter to the Rainer Grand Hotel. Hope you haven't sold

the gold prospect; would like another try at it. Did old George fix the launch up and use her this winter? You might ask him if he wants me to bring anything up from Seattle for him. Didn't get to the mining college this winter, Red, but am going to plug pretty hard next summer, so I can go another [290—250] winter. Was going to write to Gus Brown and ask him if he wanted anything from below. You might save me the trouble by telling him that I have written to you.

Wasn't I the lucky Swede to sell out of the St. Elias? Poor old Poot had the chance to sell out after I did and could have gotten \$1,000.00 more. I told him at the time he should have sold. If you haven't outlined definitely what you are going to do next summer, Red, would like to make the same proposition to you that I made for last summer. There never will be a better time to sell copper properties than next summer. If the price of copper goes much higher, they'll surely find a substitute. So let's start early, Red, and get hold of something on Knight's Island near the water. You know I am pretty good at judging whether a prospect is worth doing work on or not.

I have an English Co. and two California crowds who have told me they will buy anything I have that looks good. If you will go in with me for next summer, Red, I'll make you some money sure. Maybe I'll make enough so we both can go to Freiburg for all next winter. Maybe you think I'M over sanguine, Red, but I'm not. I can see the opportunity

(Testimony of H. E. Ellis.)

so plainly that I have been anxious all winter for summer to come so I could get to work. Such an opportunity as I see does not come to us often, so let us take advantage of it while we have the chance.

Let me hear from you at Seattle anyway, Red. Mrs. Debney and I are now going to take a swim. It's been so hot here that we have been in the water almost every day for the past week. She joins me in regards.

Yours truly,

C. G. DEBNEY.

Q. State to the Court the extent of the discovery which you state that you made after you showed this property to Mr. Debney.

A. The same fall, I think it was, after Mr. Debney had gone to the States, I went further up the hill, probably a distance of 100 feet above this first discovery. It was very thick brush in there and all kinds of devil clubs and was hard to get there and it was off a little to the right where I consider the vein ran that I discovered an outcrop of quartz sticking up two and a half or three feet above the surface of the ground, among the heavy leaves, which hid it during the summer, but after the frost stuck and killed that stuff, it showed up much easier and I found this quartz sticking up there, five or six feet in length and standing up there above [291—251] the ground two or three feet deep and I broke chunks of it off and found it was very rich, some of the richest quartz I found on the ground.

By the COURT.—That was before you made the

(Testimony of H. E. Ellis.)

first agreement with Treat and Smith, was it?

A. Yes, that was in the fall of 1906.

Q. This letter that has been admitted in evidence, Defendant's Exhibit #12—that is the letter you received from Mr. Debney?

A. Yes, sir, that is the letter I received from Mr. Debney.

Mr. RITCHIE.—Although this letter has been admitted, I desire *to it* further on the ground that there is no statement in the letter which refers to this conversation or proposed agreement between Ellis and Debney, and it simply rests after all on Mr. Ellis' own testimony. He says that his contemplated arrangement with Debney was prior to the date of this letter but this letter makes no reference to any discussion they had about the cliff property. It rests wholly on Mr. Ellis' word that it was prior to this letter—it is a self-serving declaration.

By the COURT.—The letter will be admitted merely for the purpose of showing about the time of this transaction with Debney. Plaintiffs allowed an exception to the ruling.

Q. The gold prospect referred to, was that the property in controversy in this case?

A. Yes, it was.

(By Mr. DONOHOE.)

Q. What results did Mr. Debney get from his samples taken on this property during the time this deal was pending between you and him?

A. Mr. Debney had one assay made which I think



(Testimony of H. E. Ellis.)

went \$63.20, I am [292—252] not positive of the exact amount but something in that neighborhood, I believe.

Q. What other assays did he have made?

A. He had one assay made of quartz and country rock, probably a width of six to eight inches of quartz, in the neighborhood of two feet of the country rock alongside, which went very low, possibly ten or twelve dollars, I don't know.

Q. Don't you know as a matter of fact that his

Q. That it went six dollars?

A. Possibly it only went six dollars, but I don't know that.

Q. Didn't he tell you so?

A. He told me possibly at the time.

Q. That it went six dollars?

A. No, I don't say that—he possibly told me what it went, but I don't know what it amounted to, but it was very low.

Q. Wasn't that assay taken from the breast of the tunnel after the shipment was made to the Selby Smelter?     A. No, sir.

Q. There was no tunnel there at the time?

A. There was no tunnel there at the time or sign of a tunnel.

Q. Now, you say that Mr. Debney offered you, or you offered to sell to Mr. Debney a quarter interest in the property for a thousand dollars, is that right?

A. For a thousand dollars, with the stipulation or agreement that he was to put up the same amount

(Testimony of H. E. Ellis.)

in the bank to be used for the development of the property and the putting of a small stamp-mill on the ground, which we thought could be put there for \$1,500.

Q. How much was Mr. Debney to pay for the quarter interest?

A. He was to pay a thousand dollars for the quarter interest, with this work, a man to work with me during the winter, and a [293—253] thousand dollars to be put up against my thousand dollars, which he was to pay me, for the putting up of this stamp-mill and this development.

Q. Can't you estimate what this quarter interest would cost Mr. Debney under your proposition?

A. It would cost him probably two thousand dollars and a winter's work.

Q. He would get one-quarter of that back, having his quarter of the property improved by it, would he not?

A. I don't know what he would have gotten back, but his quarter of the property would be improved by it.

Q. His quarter of the property would be improved by it? A. It surely would.

Q. Then he was to put two thousand dollars into the development of the property for a quarter interest in it?

A. He was to pay me a thousand dollars in cash.

Q. And you were to put that back into the property? So for his share he was to get two thousand

(Testimony of H. E. Ellis.)

dollars worth of development and a quarter interest in the property?

A. You can make your own calculations. I have told you to the best of my ability.

Q. You were to put up all of this thousand dollars he was to pay you back into the property—you were not to keep any of that for your private use?

A. I was to put that in the bank to be drawn on for the development of this property.

Q. And Mr. Debney was to put up another thousand? A. That was the understanding.

Q. Now, is it not a fact that after this shipment was made to the Selby smelter and this tunnel was driven a short distance, you offered Mr. Debney a quarter interest in the property for [294—254] a thousand dollars cash and he was to turn in for the use of the property a small launch that he had in Valdez Bay and before the deal was closed he went down there and took samples from the breast of the tunnel and got an assay of six dollars a ton and refused to go in on your deal?

A. I never made Mr. Debney any such proposition.

Q. You never made him any proposition *by* the proposition that you have testified to?

A. The proposition I have reference to.

Q. You never made him any proposition on the property excepting the one you have testified to?

A. I may have made a proposition to him afterwards, but it was on different terms altogether.

(Testimony of H. E. Ellis.)

Q. What proposition did you make him afterwards?

A. I don't remember having made any—I don't particularly remember having made any proposition.

Q. The only proposition you have any recollection of ever making him on that property was the one you have testified to?

A. I remember making him a proposition in 1906 which I have just spoken about.

Q. Do you remember ever making him another proposition with reference to that property?

A. I can't recall at present—it is possible I may have done so.

Q. To the best of your recollection you never made him any proposition but the one you have testified to, in the fall of 1906?

A. That is the only one I remember at present.

Q. You remember nothing since then, of another proposition?

A. I remember nothing since then of another proposition.

Mr. DONOHUE.—That's all.

By the COURT.—I would like to hear from Mr. Debney on this matter. [295—255]

(By Mr. GANTY.)

Q. Who was present while you were negotiating with Mr. Debney, if anybody?

A. Mrs. Debney was there most of the time.

Mr. GANTY.—And I understood the money was

(Testimony of H. E. Ellis.)

in her name and she was to put up the money for this proposition.

By the COURT.—Do you want to have both of their statements then?

Mr. GANTY.—I would much prefer it.

Mr. DONOHUE.—I would like to state to the Court at this time so as to be clear on this matter, that we knew something of this Debney testimony on advance, knew there were some statements about it; about two months ago I wrote to Mr. Smith in Seattle to get into communication with Mr. Debney and ascertain what he knew. Mr. Smith received a letter from Mr. Debney—the letter is now in Seattle—in which Mr. Debney in rather an indefinite way stated the terms of the sale and said that he would rather be left out of the matter, as he was a friend of Red's and he didn't want to give his deposition in the case. We didn't believe the testimony was of sufficient importance to warrant the taking of this deposition, when he requested as a favor not to be required to testify in the case and for that reason we let it go by. I want to make that statement to explain why we didn't have that testimony here.

By the COURT.—I can understand how Mr. Debney's statement or testimony might not be important or might not be admissible even, but in considering this case yesterday I recalled a statement Mr. Debney made to me a year or two ago and it struck me it might have some bearing and might tend to throw some light on this matter, that is the reason I brought it up.



(Testimony of H. E. Ellis.)

Mr. GANTY.—If it would throw any light on the matter we are willing that Mr. Martin should testify.

[296—256]

By the COURT.—This matter of Mr. Debney's would be admissible, if admissible at all, upon the theory of admission against interest, which is always admissible, but a statement in interest is necessarily self-serving and would throw no light on it. The whole theory of these matters is that a statement against the interest of the witness or a party in action is admissible—for that reason—he might have made offers to a dozen different people that would not be admissible; for that reason I don't feel that Mr. Martin's testimony would be any aid in the case.

The WITNESS.—At the time that Mr. Debney took this second assay of his, it was the day that the "Oregon" was wrecked on Hinchinbrook Island and Mr. Debney and I were coming back in a little launch I owned and when we got to the Three Way Light, why the light had gone out and we didn't have a light on the boat, and when we got near the Swanitz dock, one of the revenue cutters was tied up there and I think one was tied up at the Valdez dock and they started out from the docks at that time without their lights, without any lights out at all, so we couldn't locate their position and we were very much afraid they might run us down. Mr. Debney will surely remember that because we were both very much frightened to be out in the path of those two boats and not knowing their location and they not being able to see ours.

By the COURT.—He no doubt will be able to fix the time approximately.

It was finally stipulated and agreed between the parties and attorneys in the case that the following telegram be sent to Mr. Debney, his answer when received to be considered as evidence in the case:  
[297—257]

**[Telegram, October 9, 1915, F. M. Brown, Judge, to Charles G. Debney.]**

Valdez, Alaska, October 9, 1915.

Charles G. Debney,

1749 Cahuenga St.,

Hollywood, Los Angeles, California.

Prior to June nineteen hundred nine did H. E. Ellis offer to sell option or lease any interest in the Cliff mine to you? If so state about the time, what interest you were to have and the price and terms. Answer by wire collect and mail your and Mrs. Debney's affidavits in full at once.

F. M. BROWN,

Judge.

This telegram was forwarded and the following reply received:

**[Telegram, Chas. G. Debney to Judge Fred M. Brown.]**

Los Angeles, Cal., Oct. 11-12, 1915.

Judge Fred M. Brown,

Valdez, Alaska.

The day steamship "Oregon" wrecked on Hinchinbrook H. E. Ellis offered to sell me one quarter interest in Cliff mine for one thousand dollars cash and

my launch worth five hundred dollars. Mailing affidavits.

CHAS. G. DEBNEY.

Later an affidavit was received from Mr. Debney to the same effect, copy of which is attached hereto and made a part hereof. [298—258]

I do hereby certify that I am the Official Court Reporter for the District Court, Territory of Alaska, Third Division; that as such I reported the proceedings had in the above-entitled cause, to wit,—George C. Treat, Edmund Smith and Logan Archibald versus H. E. Ellis, being Case #721 of the records of said court; that the above transcript is a full, true and correct transcript of the evidence introduced and proceedings had at the trial of said cause.

Dated at Valdez, Alaska, December 31, 1915.

(Signed) I. HAMBURGER. [299—259]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Petition for Appeal.**

To the Honorable Fred M. Brown, District Judge,  
the above-named H. E. Ellis, defendant in the above-

entitled cause, feeling aggrieved by the decree rendered and entered in the above-entitled cause on the 16th day of October, A. D. 1915, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and document upon which said decree was based, duly authenticated be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of him be made.

CHAS. G. GANTY,  
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 14, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [300]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

### **Assignment of Errors.**

Now comes the defendant in the above-entitled cause and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above-entitled cause, from the decree made by this Honorable Court on the 16th day of October, 1915.

#### **I.**

That the above-named District Court erred in overruling the demurrer interposed by the defendant and appellant to the original complaint filed in the cause.

#### **II.**

That the above-named District Court erred in denying the motion of the defendant and appellant to strike parts of plaintiffs' complaint filed in said cause.

#### **III.**

That the above-named District Court erred in allowing plaintiffs' motion to amend their complaint in said cause, made in open court at the close of plaintiff's case, over the objection and exception of defendant, in the manner following: By striking out from paragraph VI of said complaint the words "hold said contract of July 9, 1908, in abeyance and" for the reason that such amendment was prejudicial to defendant in the trial of this cause and the variance between the proof offered by plaintiffs and said complaint is so great as to be fatal to the cause of said plaintiffs. [301]



## IV.

That the above-named District Court erred in allowing plaintiffs' motion to amend their complaint in said cause, made in open court at the close of plaintiff's case, over the objection and exception of defendant, in the manner following: By striking out from paragraph VI of said complaint the words "At which time defendant specifically agreed verbally to and with plaintiffs Treat and Smith at the termination of said lease he would join Treat and Smith in forming the corporation as provided in said contract of July 9, 1908, and would carry out all of the terms of said contract to be performed by him thereunder, or, that he, defendant, would deed to each of plaintiffs Treat and Smith an undivided one-tenth interest in and to each and all of said mining claims," for the reasons before stated.

## V.

That the above-named District Court erred in allowing plaintiffs' motion to amend their complaint in said cause, made as aforesaid, and over the objection and exception of defendant, in the manner following: By striking out from paragraph XIII of said complaint the words "the plaintiffs herein have been ready, able and willing to perform all of the matters and things to be performed by them, pursuant to the contract of July 9, 1908, heretofore set out, but" for the reasons above stated.

## VI.

That the above-named District Court erred in allowing plaintiffs' motion to amend their complaint

in said cause, made as aforesaid, and over the objection and exception of defendant, in the manner following: By striking out from paragraph XIII of said complaint the words "to join plaintiffs in the organization of said corporation, or" for the reasons above stated. [302]

#### VII.

That the above-named District Court erred in allowing plaintiffs' motion to amend their complaint in said cause, made as aforesaid, and over the objection and exception of defendant, in the manner following: By striking out from said complaint, from the first paragraph of the prayer thereof, the followings words: "specifically perform the contract of July 9, 1908, set out in the fifth paragraph of this complaint, or that he" for the reasons above stated.

#### VIII.

That the above-named District Court erred in denying the motion of defendant and appellant for a dismissal of this action by reason of the failure of plaintiffs to offer sufficient evidence to sustain their pleadings; which said motion, ruling of said Court and exception of defendant and appellant thereto, appear upon the record in said cause.

#### IX.

That the above-named District Court erred in overruling defendant's objection and exception to the findings of fact and conclusions of law of the Court herein, for the reason that the same are against the law and contrary to the law and against the evidence and not supported by the evidence, and

not justified by the evidence, and for the reason that there is not any evidence to support the same or any part of the same.

X.

That the above-named District Court erred in rendering and making it's final decree and judgment herein for the reason that the same was against the law and contrary to the law, and unsupported by the facts of the evidence, not justified by the evidence, and for the reason that there is no evidence to support the same.

Wherefore the appellant prays that the said judgment and decree be reversed and that said District Court for the [303] Territory of Alaska, Third Division, be ordered to enter a decree reversing the decision of the lower court in said cause.

CHAS. G. GANTY and

T. C. WEST,

Attorneys for Appellant.

[Endorsed as follows]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 14, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.  
[304]

[Order Allowing Appeal.]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

On motion of Chas. G. Ganty, Esq., solicitor and counselor for defendant, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree heretofore filed and entered herein, be, and the same is hereby allowed, and that a certified transcript of the *the* record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit. It is further ordered that the bond on appeal be fixed at the sum of \$1,000.

Done in open court this 23 day of February, 1916.

FRED M. BROWN,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 23, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page 486. [305]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Appeal Bond.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, H. E. Ellis, as principal, and National  
Surety Company, a corporation, as surety, are held  
and firmly bound unto Geo. C. Treat, Edmund Smith  
and Logan Archibald, above-named plaintiffs in the  
sum of one thousand dollars, lawful money of the  
United States of America, for which payment well  
and truly to be made we bind ourselves, our succes-  
sors and heirs, executors and assigns, jointly and  
firmly by these presents.

Sealed with our seals and signed by us and each of  
us this 23d of February, 1916.

The condition of the above obligation is such that  
whereas, the above-named principal, H. E. Ellis, has  
appealed from a judgment rendered and entered in  
the above-entitled cause in the District Court for the  
Territory of Alaska, Third Division, in favor of the  
plaintiff and against the defendant on the 16th day  
of October, 1915, and whereas the defendant has ap-  
pealed from said judgment to the Circuit Court of



Appeals for the Ninth Circuit, and should said judgment be affirmed in favor of the above-named plaintiffs and against the above-named defendant, and should the above-named defendant pay all costs and disbursements of said plaintiffs and each of them legally taxed against said defendant in said cause, then this obligation to be void; otherwise to remain in full force and virtue.

H. E. ELLIS,

Principal.

NATIONAL SURETY COMPANY,

[Seal]

By JOS. L. REED,

Attorney in Fact.

By T. P. GERAGHTY,

Attorney in Fact. [306]

United States of America,  
Territory of Alaska,—ss.

Jos. L. Reed, first being duly sworn, deposes and says: That I am the authorized agent of the National Surety Company, a corporation, and make this affidavit in it's behalf; and further say, on information and belief, that the said National Surety Company has complied with the provisions of an Act relative to bail and recognizance, etc., approved April the 29th, 1915, and the laws of the United States and of the Territory of Alaska.

JOS. L. REED.

Subscribed and sworn to before me this 23d day of February, 1916.

[Notarial Seal]

CHAS. G. GANTY,

Notary Public for Alaska.

My commission expires October 21, 1917.

The within bond is hereby approved both as to matter and as to form, this 23d day of February, A. D. 1916.

FRED M. BROWN,

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 23, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

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*In the District Court for the Territory of Alaska,  
Third Division.*

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

### **Citation on Appeal.**

United States of America,—ss.

The United States of America to Geo. C. Treat, Edmund Smith and Logan Archibald, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, on the 24th day

of March, A. D. 1916, pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the Territory of Alaska, Third Division, from a final decree signed, filed, and entered on the 16th day of October, 1915, in that certain suit, being in equity No. 721 wherein H. E. Ellis is appellant, and you and each of you are respondents and appellees, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable FRED M. BROWN, United States District Judge for the Territory of Alaska, Third Division, this 23 day of February, 1916, and of the Independence of the United States the one hundred and fortieth.

[Official Seal]

FRED M. BROWN,

U. S. District Judge for the Territory of Alaska,  
Third Division.

Attest: ARTHUR LANG,

Clerk of the District Court for the Territory of  
Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 23, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [307]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEORGE C. TREAT, EDMUND SMITH and LO-  
GAN ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Stipulation Specifying Contents of Bill of  
Exceptions.**

It is hereby stipulated by counsel for the parties respectively in the above-entitled cause that the following shall constitute the Bill of Exceptions on Appeal to the Circuit Court of Appeals, to wit:

1. Complaint of Plaintiffs.
2. Motion to Strike Portions of Plaintiff's Complaint.
3. Minute Order on Motion to Strike Portions of Complaint.
4. Demurrer to Plaintiffs' Complaint.
5. Minute Order Overruling Demurrer to Said Complaint.
6. Answer of Defendant.
7. Motion to Strike Portions of Said Answer.
8. Order on Plaintiff's Motion to Strike Portions of Answer.
9. Reply.
10. Decision (Opinion of Court).

11. Findings of Fact and Conclusions of Law.
12. Decree.
13. Order Extending Time to File Bill of Exceptions to February 15th, 1916.
14. Order Extending Time to File Bill of Exceptions to February 25th, 1916.
15. Stipulation as to Record, Abbreviating Exhibits. [308]
16. Transcript of Evidence, Bill of Exceptions Including All Testimony.
17. Petition for Appeal and Assignments of Error.
18. Order Allowing Appeal and Fixing Amount of Bond.
19. Bond on Appeal.
20. Citation.
21. This Stipulation.
22. Order Allowing, Certifying and Settling Bill of Exceptions.
23. Order Directing Forwarding of Defendant's Exhibits Nos. 1-2-3-4 to Circuit Court of Appeals.

DONOHUE & DIMOND and  
LYONS & RITCHIE,

Attorneys for Plaintiffs and Appellees.

CHAS. G. GANTY,

Attorney for Defendant and Appellant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 15, 1916. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [309]



*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH AND LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Order Directing Forwarding of Defendant's Exhibits  
Nos. 1, 2, 3 and 4.**

This matter coming on regularly to be heard on motion of Chas. G. Ganty, Esquire, Attorney for the above-named defendant, and plaintiffs herein being represented by their attorneys Messrs. Donohoe & Dimond and Lyons & Ritchie; and said plaintiffs by their said attorneys having consented thereto; and sufficient cause having been shown to the Court therefor;

IT IS HEREBY ORDERED that Defendant's Exhibits Nos. 1, 2, 3 and 4 be forwarded by the clerk of this court to the United States Circuit Court of Appeals for the Ninth Circuit for the purposes of physical examination by said Appellate Court in the hearing on appeal of the above-entitled cause.

Done in open court this 23 day of February, 1916.

FRED M. BROWN,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 23, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page 486. [310]

**[Defendant's Exhibit No. 1—Articles of Incorporation of the Mystic Gold Mining Co., Dated July 21, 1908.]**

ARTICLES OF INCORPORATION  
of the  
MYSTIC GOLD MINING COMPANY.

KNOW ALL MEN BY THESE PRESENTS:  
That we, George C. Treat, H. E. Ellis and Edmund Smith, have this day associated ourselves together for the purpose of forming a corporation under the laws of the Territory of Alaska.

AND WE HEREBY CERTIFY:

FIRST.

That the name of said corporation is the MYSTIC GOLD MINING COMPANY.

SECOND.

That the purposes for which same is formed are:  
To carry on the business of mining and reducing ores; to buy, sell, lease and operate mines and mining properties; to erect, buy, sell, operate smelters, stamp-mills, and any and all kinds of reduction works; to buy, sell, operate steamships and all kinds of water craft; to build, construct, operate, lease, buy and sell railroads; to acquire, hold, buy sell and exchange real estate and personal property either on its own account or on consignment and commission; to operate and conduct stores and handle all kinds of

merchandise either on its own account or on consignment of commission and to engage in any and all kinds of manufacturing.

### THIRD.

That the place where its principal business is to be transacted shall be at Valdez, Alaska.

### FOURTH.

That said corporation shall commence on the 21st day of July, 1908, and continue for fifty years.

### FIFTH.

That the number of its board of directors shall be [311] three, and that H. E. Ellis, George C. Treat and T. E. Dougherty shall constitute its first board of directors, and shall hold their office until the next stockholders' meeting.

### SIXTH.

That the amount of the capital stock of said corporation shall be two hundred thousand (200,000) dollars, divided into two hundred thousand (200,000) shares of the par value of one (\$1.00) dollar per share, and that said stock shall be paid for at par either in cash, property or services.

### SEVENTH.

That the highest amount of indebtedness of which said corporation shall at any time be subject shall be fifty thousand (\$50,000) dollars.

### EIGHTH.

That the government of said corporation shall be vested in its board of directors who may elect such officers and appoint such agents, giving them such power and authority as it may deem proper. Such

board of directors shall be elected annually at such time as may be *perscribed* by the by-laws.

NINTH.

That the board of directors shall elect a president, vice president, secretary and treasurer with the usual powers of such officers, and such additional power and authority as said board may confer on such officers, and they shall be elected annually and hold their respective offices until their successors are elected and qualified.

IN WITNESS WHEREOF, we have hereunto set our hands this 21st day of July, 1908.

In presence of.—

~~B. B. Lockhart.~~

~~Geo. C. Treat.~~ (Seal)

~~H. E. Ellis.~~ (Seal)

~~Edmund Smith.~~ (Seal)

[312]

United States of America,  
Territory of Alaska,—ss.

BE IT REMEMBERED, that on this 21st day of July, 1908, before me, the undersigned notary public in and for the Territory of Alaska, personally appeared H. E. Ellis, George C. Treat and Edmund Smith, known to me to be the persons described in and who executed the foregoing Articles of Incorporation, and duly acknowledged to me that they signed and sealed the same of their own free act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal the day and year first above written.

[Seal]

B. B. LOCKHART,  
Notary Public. [313]

[Defendant's Exhibit No. 2—Articles of Incorporation of Mystic Gold Mining Co., Dated July 21, 1908.]

## ARTICLES OF INCORPORATION

of the

### MYSTIC GOLD MINING COMPANY.

KNOW ALL MEN BY THESE PRESENTS:

That we, George C. Treat, H. E. Ellis and Edmund Smith, have this day associated ourselves together for the purpose of forming a corporation under the laws of the Territory of Alaska.

AND WE HEREBY CERTIFY:

#### FIRST.

That the name of said corporation is the MYSTIC GOLD MINING COMPANY.

#### SECOND.

That the purposes for which same is formed are; To carry on the business of mining and reducing ores; to buy, sell, lease, and operate mines and mining properties; to erect, buy, sell, operate smelters, stamp mills, and any and all kinds of reduction works; to buy, sell, operate steamships and all kinds of water craft; to build, construct, operate, lease, buy and sell railroads; to acquire, hold, buy, sell and exchange real estate and personal property either on its own account or on consignment and commission; to operate and conduct stores and handle all kinds



of merchandise either on its own account or on consignment or commission, and to engage in any and all kinds of manufacturing.

### THIRD.

That the place where its principal business is to be transacted shall be at Valdez, Alaska.

### FOURTH.

That said corporation shall commence on the 21st day of July, 1908, and continue for fifty years.

### FIFTH.

That the number of its board of directors shall be [314] three, and that H. E. Ellis, George C. Treat and T. E. Dougherty shall constitute its first board of directors, and shall hold their office until the next stockholders meeting.

### SIXTH.

That the amount of the capital stock of said corporation shall be two hundred (200,000) dollars, divided into two hundred thousand (200,000) shares of the par value of one (\$1.00) dollar per share, and that said stock shall be paid for at par either in cash, property or services.

### SEVENTH.

That the highest amount of indebtedness of which said corporation shall at any time be subject shall be fifty thousand (\$50,000) dollars.

### EIGHTH.

That the government of said corporation shall be vested in its board of directors who may elect such officers and appoint such agents, giving them such power and authority as it may deem proper. Such board of directors shall be elected annually at such

time as may be *perscribed* by the by-laws.

# NINTH.

That the board of directors shall elect a president, vice-president, secretary and treasurer with the usual powers of such officers, and such additional power and authority as said board may confer on such officers, and they shall be elected annually and hold their respective offices until their successors are elected and qualified.

IN WITNESS WHEREOF, we have hereunto set our hands this 21st day of July, 1908.

In presence of.—

~~B. B. Lockhart.~~

Geo. C. Treat. (Seal)

H. E. Ellis. (Seal)

Edmund Smith. (Seal)

[315]

United States of America,  
Territory of Alaska,—ss.

BE IT REMEMBERED, that on this 21st day of July, 1908, before me, the undersigned notary public in and for the Territory of Alaska, personally appeared H. E. Ellis, George C. Treat and Edmund Smith, known to me to be the persons described in and who executed the foregoing Articles of Incorporation, and duly acknowledged to me that they signed and sealed the same of their own free act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

B. B. LOCKHART,  
Notary Public. [316]

**[Defendant's Exhibit No. 3 — Articles of  
Incorporation of Mystic Gold Mining Co.,  
Dated July 21, 1908.]**

**ARTICLES OF INCORPORATION**

of the

**MYSTIC GOLD MINING COMPANY.**

**KNOW ALL MEN BY THESE PRESENTS:**

That we, George C. Treat, H. E. Ellis and Edmund Smith, have this day associated ourselves together for the purpose of forming a corporation under the laws of the Territory of Alaska.

**AND WE HEREBY CERTIFY:**

**FIRST.**

That the name of said corporation is the **MYSTIC GOLD MINING COMPANY.**

**SECOND.**

That the purposes for which same is formed are;  
To carry on the business of mining and reducing ores; to buy, sell, lease and operate mines and mining properties; to erect, buy, sell, operate smelters, stamp mills, and any and all kinds of reduction works; to buy, sell, operate steamships and all kinds of water craft; to build, construct, operate, lease, buy and sell railroads; to acquire, hold, buy, sell and exchange real estate and personal property either on its own account or on consignment and commission; to operate and conduct stores and handle all kinds of merchandise either on its own account or on consignment of commission, and to engage in any and all kinds of manufacturing.

## THIRD.

That the place where its principal business is to be transacted shall be at Valdez, Alaska.

## FOURTH.

That said corporation shall commence on the 21st day of July, 1908, and continue for fifty years.

## FIFTH.

That the number of its board of directors shall be [317] three, and that H. E. Ellis, George C. Treat and T. E. Dougherty shall constitute its first board of directors, and shall hold their office until the next stockholders meeting.

## SIXTH.

That the amount of the capital stock of said corporation shall be two hundred thousand (200,000) dollars, divided into two hundred thousand (200,000) shares of the par value of one (\$1.00) dollar per share, and that said stock shall be paid for at par either in cash, property or services.

## SEVENTH.

That the highest amount of indebtedness of which said corporation shall at any time be subject shall be fifty thousand (\$50,000) dollars.

## EIGHTH.

That the government of said corporation shall be vested in its board of directors who may elect such officers and appoint such agents, giving them such power and authority as it may deem proper. Such board of directors shall be elected annually at such time as may be prescribed by the by-laws.

NINTH.

That the board of directors shall elect a president, vice president, secretary and treasurer with the usual powers of such officers, and such additional power and authority as said board may confer on such officers, and they shall be elected annually and hold their respective offices until their successors are elected and qualified.

IN WITNESS WHEREOF, we have hereunto set our hands this 21st day of July, 1908.

In presence of.—

~~B. B. Lockhart.~~

~~Geo. C. Treat.~~ (Seal)

~~H. E. Ellis.~~ (Seal)

~~Edmund Smith.~~ (Seal)

[318]

United States of America,  
Territory of Alaska,—ss.

BE IT REMEMBERED, that on this 21st day of July, 1908, before me, the undersigned notary public in and for the Territory of Alaska, personally appeared H. E. Ellis, Geo. C. Treat and Edmund Smith, known to me to be the persons described in and who executed the foregoing Articles of Incorporation, and duly acknowledged to me that they signed and sealed the same of their own free act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

B. B. LOCKHART,  
Notary Public. [319]



[Defendant's Exhibit No. 4 — Articles of  
Incorporation of Mystic Gold Mining Co.,  
Dated July 21, 1908.]

ARTICLES OF INCORPORATION  
of the

MYSTIC GOLD MINING COMPANY.

KNOW ALL MEN BY THESE PRESENTS:

That we, George C. Treat, H. E. Ellis and Edmund Smith, have this day associated ourselves together for the purpose of forming a corporation under the laws of the Territory of Alaska.

AND WE HEREBY CERTIFY:

FIRST.

That the name of said corporation is the MYSTIC GOLD MINING COMPANY.

SECOND.

That the purposes for which same is formed are; To carry on the business of mining and reducing ores; to buy, sell, lease and operate mines and mining properties; to erect, buy, sell, operate smelters, stamp mills, and any and all kinds of reduction works; to buy, sell, operate steamships and all kinds of water craft; to build, construct, operate, lease, buy and sell railroads; to acquire, hold, buy, sell and exchange real estate and personal property either on its own account or on consignment and commission; to operate and conduct stores and handle all kinds of merchandise either on its own account or on consignment of commission, and to engage in any and all kinds of manufacturing.

## THIRD.

That the place where its principal business is to be transacted shall be at Valdez, Alaska.

## FOURTH.

That said corporation shall commence on the 21st day of July, 1908, and continue for fifty years.

## FIFTH.

That the number of its board of directors shall be [320] three, and that H. E. Ellis, George C. Treat and T. E. Dougherty shall constitute its first board of directors, and shall hold their office until the next stockholders meeting.

## SIXTH.

That the amount of the capitol stock of said corporation shall be two hundred thousand (200,000) dollars, divided into two hundred thousand (200,000) shares of the par value of one (\$1.00) dollar per share, and that said stock shall be paid for at par either in cash, property or services.

## SEVENTH.

That the highest amount of indebtedness of which said corporation shall at any time be subject shall be fifty thousand (\$50,000) dollars.

## EIGHTH.

That the government of said corporation shall be vested in its board of directors who may elect such officers and appoint such agents, giving them such power and authority as it may deem proper. Such board of directors shall be elected annually at such time as may be prescribed by the by-laws.

## NINTH.

That the board of directors shall elect a president, vice president, secretary and treasurer with the usual powers of such officers, and such additional power and authority as said board may confer on such officers, and they shall be elected annually and hold their respective offices until their successors are elected and qualified.

IN WITNESS WHEREOF, we have hereunto set our hands this 21st day of July, 1908. [321]

United States of America,  
Territory of Alaska,—ss.

BE IT REMEMBERED, that on this 21st day of July, 1908, before me, the undersigned notary public in and for the Territory of Alaska, personally appeared H. E. Ellis, George C. Treat and Edmund Smith, known to me to be the persons described in and who executed the foregoing Articles of Incorporation, and duly acknowledged to me that they signed and sealed the same of their own free act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

B. B. LOCKHART,  
Notary Public. [322]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. 721.

GEO. C. TREAT, EDMUND SMITH and LOGAN  
ARCHIBALD,

Plaintiffs,

vs.

H. E. ELLIS,

Defendant.

**Order Allowing, Certifying and Settling Bill of  
Exceptions.**

The matter of settling the record preparatory to appeal on the part of the defendant herein coming on for hearing on this 25th day of February, A. D. 1916;

And upon request of counsel for all parties hereto, and for good cause shown, the court hereby directing that the testimony of the witnesses Edmund Smith, Geo. C. Treat, Chas. Kraemer, Logan Archibald, B. F. Millard, H. E. Ellis, H. L. Rider, John Hughes and Chas. G. Ganty, given at the trial of said cause, shall be reproduced in the exact words of said witnesses;

And it appearing to the Court that counsel for the defendant and plaintiffs respectively, have stipulated and agreed upon a proposed bill of exceptions to be used upon appeal in this cause, and said proposed bill of exceptions having been delivered to the clerk of this court;

And said proposed bill of exceptions containing

what purports to be a transcript of the testimony and evidence upon which said cause was tried and final decree rendered herein, and the Court upon examination finding that the foregoing transcript of testimony in said proposed bill of exceptions contained, constitutes a full, true and correct copy and transcript of the testimony and evidence, and all of the same, upon which said cause was tried and final judgment and decree rendered herein; and it further appearing to the Court that said proposed bill of exceptions conforms to the truth [323] and is in proper form—

It is ordered that said bill of exceptions be and the same is hereby approved, allowed and settled and ordered to be filed and made part of the record in this cause.

Done in open court this 25th day of February,  
A. D. 1916.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Feb. 25, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page 493. [324]

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

United States of America,  
Territory of Alaska,  
Third Division,—ss.

I, Arthur Lang, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby



certify that the hereto annexed 325 pages, numbered from 1 to 325, inclusive, are a true and correct transcript of the records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that the same is made in accordance with the stipulation of counsel for the parties, respectively.

I further certify that the foregoing transcript has been prepared, examined and certified to by me and the cost thereof, amounting to \$47 25/100, was paid to me by Chas. G. Ganty, attorney for the defendant and plaintiff in error herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this court at Valdez, Alaska, this 25th day of February, A. D., 1916.

[Seal]

ARTHUR LANG,

Clerk of the District Court, Territory of Alaska,  
Third Division.

By K. L. Monahan,

Deputy Clerk. [325]

[Endorsed]: No. 2758. United States Circuit Court of Appeals for the Ninth Circuit. H. E. Ellis, Appellant, vs. Geo. C. Treat, Edmund Smith and Logan Archibald, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Third Division.

Filed March 10, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

